

Name of meeting: Cabinet

Date: 21st August 2018

Title of report: Proposed appropriation of Cemetery Road Allotments, Huddersfield

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes Allotments are proposed for appropriation in relation to the construction of playing fields for the new 420 place Brambles Primary Academy.
Is it in the Council's Forward Plan?	Yes 11 / 05 / 2018
Is it eligible for "call in" by Scrutiny?	Yes
Date signed off by Strategic Director & name	Karl Battersby - 10.08.2018
Is it signed off by the Acting Service Director - Finance, IT and Transactional Services	Eamonn Croston - 10.08.2018
Is it signed off by the Service Director - Legal, Governance and Commissioning	Julie Muscroft - 10.08.2018
Cabinet member portfolio	Cllr Masood Ahmed – Learning and Aspiration; Cllr Naheed Mather – Communities and Environment; Cllr Graham Turner – Corporate.

Electoral [wards](#) affected: Greenhead and Newsome

Ward councillors consulted: Yes

Public or private: Public

1. Summary

- 1.1 This report seeks approval from Cabinet for the appropriation of a defined section of Cemetery Road Allotments, Huddersfield from general estate purposes to education purposes.
- 1.2 This is to facilitate the redevelopment of the land to create playing fields and car parking provision for the new 420 place primary school that is being built on the adjacent Clare Hill playing fields.

2. Information required to take a decision

The need for a new school

- 2.1 Kirklees Council has a statutory duty to ensure that there are sufficient high quality school places to meet the needs of Kirklees families and communities. This is described as “basic need”.
- 2.2 In October 2013 Cabinet authorised officers to develop proposals to inject up to 1260 additional school places across Huddersfield to address ongoing and increasing pressures on primary school places arising from expected population growth.
- 2.3 Two new primary schools have been built to date – a new 420 place primary school building at Royds Hall Community School and Beaumont Primary Academy, a new 630 place primary school (of which 420 places are new), which has been constructed in the grounds of Moor End Academy – Secondary School.
- 2.4 Proposals for the development of a third new 420 place primary school to serve North Huddersfield were considered by Cabinet in October 2016. Approval was given for the:
 - selection of Clare Hill Playing fields as the preferred site for the new school;
 - negotiation with Greenhead College for the purchase of land on which to build the new school;
 - submission of an outline planning application for the new school in order to establish whether or not the development of a new school is deliverable;
 - use of some of the adjacent Cemetery Road Allotments site, Huddersfield as part of the overall solution for the new school proposal subject to further investigation and implementation of arrangements to minimise the potential impact on allotment holders.
- 2.5 In November 2017 outline planning permission was granted for the creation of the new school and associated playing field and parking provision. Condition 26 required the submission and approval of a package of measures for providing displaced plot holders with replacement allotment plots.

- 2.6 In March 2018 the Council published legal notices declaring its intention to appropriate a defined area of Cemetery Road Allotments site, Huddersfield from general estates purposes to educational purposes so that the land could be converted to playing fields and other school related uses and invited interested parties to provide comment on the proposals by a set date. This was in accordance with legislation that requires the Council to follow a set process before using its statutory powers to appropriate land.
- 2.7 In March 2018 a reserved matters planning application was submitted to confirm details of the proposed school and site layout. Approval of this application is expected in August 2018. Indicative visuals of the proposed new school are attached at **Appendix A**.

The need for a defined area of Cemetery Road Allotments, Huddersfield

- 2.8 The need to appropriate a defined part of Cemetery Road Allotments, Huddersfield from general estates purposes to educational purposes arises out of three key factors – (a) ownership of the playing fields and allotments needed for the new school (b) the land requirements for a new primary school in order to ensure that it provides full on site access to the curriculum and (c) the need to meet Sport England requirements to replace playing field land lost to development with land of equivalent size and quality.
- 2.9 Clare Hill playing fields are owned by Greenhead College, which uses the land to deliver its sports curriculum. The College was approached by the Council regarding the potential purchase of the whole or a portion of the site in order to deliver the proposed new school. The Governing Body of the College was content to sell one playing field to the Council but wished to retain the remaining land in its ownership in order to meet its own curriculum needs for sports activities.
- 2.10 The playing field being purchased is of sufficient size to permit the construction of the new school building and some aspects of the external play and ancillary spaces required but is insufficient to provide all facilities needed. In particular, there is no space for the provision of external playing fields.
- 2.11 The design of new build schools is governed by the Department for Education's Building Bulletin 103: Area Guidelines for Mainstream Schools, which sets minimum standards for the size of new schools. Reference to this publication indicates that the gross site area required for a 420 Place Primary School is between 16,000m² and 20,000m² , which includes all necessary hard and soft play areas, outdoor grassed sport spaces, vehicle access and car parking etc.
- 2.12 The land to be acquired from Greenhead College equates to around 13,125m² and cannot accommodate all of the requirements of a new 420 place primary school. In order to ensure that the new school has access on its own site to the full range of indoor and outdoor facilities that the Council expects to see for a new development such as this,

additional land is required hence the proposal to appropriate land at Cemetery Road Allotments Huddersfield, which is in the control and ownership of the Council, for educational purposes. This will increase the gross site area of the new school to approximately 21,500m².

- 2.13 This exceeds the guidance size for the gross site area for a new 420 place primary school due to the planning requirements for two road entrances, one off Cambridge Road and one off Cemetery Road, to the new school to spread the impact of the development around the highways network and the subsequent need for two parking areas for parents / visitors.
- 2.14 The new primary school is being developed on urban green space that is currently used as playing fields for Greenhead College. As a result this will lead to the loss of one playing field as the school will be built on this land.
- 2.15 Sport England has a specific role in the planning system as a statutory consultee on planning applications for development affecting playing field land. As a statutory consultee it can and will object to the loss of playing field provision unless there is equivalent or better compensation in terms of quantity (creation of an equal amount of new, additional playing field provision) and quality (improvement of existing pitches so that greater utilisation is possible).
- 2.16 During the development of the project the Council identified the potential for part of the Cemetery Road Allotments, Huddersfield to be converted to playing field provision due to its adjacency to the proposed new school site and the number of vacant plots on the site. A scheme was therefore developed which proposed to re-locate existing plot holders at the top of the site to other vacant plots within the same site. This would enable the creation of new additional playing fields.
- 2.17 Pre and post planning application discussions were held with Sport England based on the provision of new playing pitches to Sport England standards, which would address their concerns in relation of replacement quantity and quality of provision. This led to Sport England withdrawing its initial objection to the loss of a playing field for the new school development. Without the defined area of allotments being proposed for appropriation the Council would not have reached an agreement with Sport England.

Legal Matters – history of the land

- 2.18 The new school, which will be known as Brambles Primary Academy (“Academy”) is to be built partly on land which is in the process of being acquired by the Council from Greenhead College, shown edged red on the plan attached at **Appendix B**, but which was formerly in the Council’s ownership, and part of the Cemetery Road Allotment site, Huddersfield shown edged blue on the same plan which is in Council ownership.

- 2.19 The land edged red and edged blue as a whole was, together with other land, acquired by the former Huddersfield Corporation pursuant to the Huddersfield Corporation (Lands) Act 1920. This was the Act of Parliament that gave Huddersfield Corporation the power to acquire the Ramsden Estate from Sir John Frecheville Ramsden on 29 September 1920 for general estate purposes.
- 2.20 As a result of local government re-organisation, the provisions of the Local Government Act 1972 and The Local Authorities (England) (Property etc.) Order 1973 the land became statutorily vested in Kirklees Council on 1 April 1974.
- 2.21 Pursuant to section 23 of the Further and Higher Education Act 1992 the Council had to transfer the land used by further education colleges to the college who had use of the land at the time that Act came in to force which is why Greenhead College came to own the land shown edged red on the plan in **Appendix C** upon which the new Academy is proposed to be built.
- 2.22 Land acquired for general estates purposes pursuant to the Huddersfield Corporation (Lands) Act 1920 remains having that statutory purpose unless it is “appropriated” for another statutory purpose pursuant to section 122 of the Local Government Act 1972. The term “appropriation” is the legal process whereby land which is held for one statutory purpose may be used for another statutory purpose. It is not analogous to a sale and acquisition but is an administrative mechanism which allows the Council to make better use of its assets.
- 2.23 Before proceeding further with the scheme to build the new Academy it needed to be determined if the allotment land shown edged blue on the plan in **Appendix B**, upon which the new playing fields and supporting infrastructure is intended to be built, had been appropriated for allotment purposes. This is because if the allotment land was still held for general estates purposes as opposed to having being appropriated to allotment purposes this would mean that they were either classified as temporary allotments; or having been appropriated for allotment purposes they would have become statutory allotments.
- 2.24 Depending on whether an allotment is temporary or statutory has a different effect on how the allotment land could be dealt with. Officers are concerned with the land edged blue on the plan in **Appendix B** which is owned by the Council and has been used for temporary allotment purposes since at least circa 1935.
- 2.25 Statutory allotments can only be created by either being bought for allotment purposes or appropriated for allotment purposes. All other allotments are considered temporary, no matter how long they may have been in existence and the provisions of the various Allotment Acts do not apply.
- 2.26 Huddersfield Corporation used to record when land had been appropriated from general estates purposes to an alternative statutory purposes on the original Ramsden Estate Conveyance plans. There is

no evidence to suggest there was ever an appropriation to allotment purposes.

- 2.27 More recently appropriations were also recorded on the Council's paper land ownership records and this information has, to an extent, been transposed on to the Council's electronic geographical information system ("the Terrier").
- 2.28 One of the Council's Senior Legal Officers specialising in property law has reviewed the original Ramsden Estate Conveyance plans, the old paper records and the Terrier and has been unable to find any record of the allotment land having been appropriated for statutory allotment purposes. This was not definitive as there is always the chance that there may have been a human error in recording the appropriation.
- 2.29 The only way of establishing for definite that there had been no appropriation was to review the minutes of the Huddersfield Corporation from 16 September 1958 (see below as to why this date is important) to 31 March 1974 and Kirklees Council from 1 April 1974 up to the point that the new method of governance was adopted in April 2002.
- 2.30 Helpfully, the Council's Asset Information Officer was able to turn up some historic records regarding the formal appropriation of land in the Huddersfield Corporation area and these referred to the minute of Huddersfield Corporation which formally appropriated the sites listed as then becoming statutory allotments.
- 2.31 The Senior Legal Officer procured these minutes from the Local Studies Library, Huddersfield and he found that at the meeting of the Estate and Property Management Committee on 15 September 1958, it resolved at minute 13 on page 484 that "No action be taken at the present time with regard to the remaining sites". This was after formally appropriating a number of parcels of land for allotment purposes but the Cemetery Road Allotment site, Huddersfield was one that was left with no further action being taken at present.
- 2.32 This gave a good starting point from which to review the historic minutes and officers from the Capital Delivery Team spent three weeks, on and off, in the Local Studies Library reviewing the historic minutes. The result of their efforts was that they found no evidence whatsoever that the Cemetery Road Allotments, Huddersfield had ever been appropriated for allotment purposes and therefore remained classed as temporary allotments, the result being that it was much easier to deal with allocating the allotments to school purposes and the statutory procedure under section 8 of the Allotments Act 1925 to cease their use as allotments (involving, amongst other things, obtaining the Secretary of State's consent) did not have to be followed.

Legal Matters – the power to appropriate land

2.33 Section 122 of the Local Government Act 1972 is the legislation that deals with the Council's powers of appropriation, although other statutory powers of appropriation are also available but will not be considered as part of this report. This section says:-

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 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, or fuel or field garden allotment (giving those expressions the same meanings as in 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,

...

(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

....

2.34 There can be confusion about what is a common or field garden allotment as referred to in sub-section 2(a) above. These are, together with the meaning of open space, defined in section 336 of the Town and Country Planning Act 1990 to mean:-

“common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green;

...

“fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act;

...

“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground;

2.35 Section 122(1) gives a Council a power to appropriate land for other statutory purposes subject to the qualifications set out in that section.

2.36 Commons, fuel field gardens and open space cannot be appropriated until the intended appropriation has been advertised in accordance with the statute set out above.

2.37 Clearly, the site of the Cemetery Road Allotments, Huddersfield are not common or fuel field gardens as they had been in the ownership of the Ramsden family for many years before their acquisition by Huddersfield Corporation pursuant to the Huddersfield Corporation (Lands) Act 1920 and they were not devolved by Inclosure Acts.

2.38 In addition, as the allotments are securely fenced and only accessible by the plot holders and their invitees the land cannot in any way be classified as public open space within the definition set out above. For information, the land is designated as urban greenspace on both the UDP and draft Local Plan but this does not mean that it is classed as open space within the legal definition set out above.

2.39 Despite there being no statutory requirement for the Council to advertise its intention to appropriate the temporary allotment land for education purposes, officers considered that having regard to the high level of public interest in the proposals for the new Academy and loss of the temporary allotment land it would be in the public interest to advertise the intention to appropriate the land from general estate purposes to education purposes in this instance.

2.40 In accordance with the requirements of paragraph 6 of Part 3 Section F of the Council's Constitution the Director of Place (as then was, but now

Economy and Infrastructure), in December 2016, delegated authority to the officers named in the Service Scheme of Delegation to be able to appropriate land for another statutory purpose without the need to advertise the intention to do so, subject to the statutory constraints set out above. Rather than do this a decision was made to be open and transparent about the process, giving the public the chance to comment upon the intention which is why officers are now reporting on the objections made in response to the advertisement.

- 2.41 Before determining whether to appropriate the temporary allotment land it had to be decided, for the purposes of section 122(1), that the allotment land was “no longer required for the purposes for which it was held immediately before the appropriation”. This is solely a question of fact for the Council to decide exercising its discretion in good faith.
- 2.42 As all of the plot holders on the allotment land required for the purposes of the Academy could be more than adequately relocated within the existing allotment site and as there are also vacant plots at various other allotment sites within the nearby area, officers determined that the land upon which the new playing fields and supporting infrastructure is intended to be constructed was no longer required for temporary allotment purposes and/or general estates purposes and was suitable for use for education use for the new Academy.
- 2.43 Section 122(1) above states that a council “may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement”.
- 2.44 There is no particular statutory provision to acquire land for the purposes of the construction of a new Academy school although other powers of acquisition of land for other types of school are set out the Education Act 1996. Alternative powers to acquire land for an Academy are available in both section 120 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 2.45 In order to satisfy section 122(1), you have to look at what powers are available and in this instance officers would suggest the use of the following section in the Local Government Act 1972:-

120 — Acquisition of land by agreement by principal councils.

(2) For the purposes of—

(2) any of their functions under this or any other enactment, or

(b) the benefit, improvement or development of their area,

a principal council may acquire by agreement any land, whether situated inside or outside their area.

...

- 2.46 One of the Council's many statutory functions is the provision of education so it could use this power, if needed, to acquire land for that function for the purposes of section 122(1).
- 2.47 Appropriation does not override any restriction there might be in other legislation under which the land is held but there are no such restrictions in the Huddersfield Corporation (Lands) Act 1920 in any event. Neither does it override restrictions in the title but again, there are none in this instance.
- 2.48 As a result of the officer decision to appropriate that part of Cemetery Road Allotments, Huddersfield to education purposes the intention to appropriate was, even though not required by statute, advertised in the Huddersfield Examiner on 16 and 23 March 2018. It was also advertised in error by the publisher on 21 March 2018. A copy of the Notice that appeared in the Huddersfield Examiner, together with the plan that is referred to in the Notice, is attached at **Appendix D**.
- 2.49 The plan at **Appendix D** shows the approximate area of two acres of land that was advertised for re-appropriation. It should be noted that the area of land of the Cemetery Road Allotments, Huddersfield comprises in allotment terms approximately 34 out of 82 allotment plots on the Cemetery Road allotments site. Of these 34 allotment plots, 14 are vacant and the remaining 20 plots are occupied by 14 plot holders.
- 2.50 In addition to the newspaper notice, laminated copies of the Notice were attached to the gates of the Cemetery Road Allotments, Huddersfield to notify passing allotment holders of the re-appropriation process. Letters were also sent to the Cemetery Road Allotments Huddersfield plot holders affected by the proposed redevelopment in order to advise them of the appropriation process and provide details as to how they could respond to it.
- 2.51 During the advertisement period of the appropriation process the Council gives 21 days from the appearance of the first legal notice in the local press for objections to be made. However, due to the advertisement period falling over the Easter holidays, this period was extended to 28 days and the final date for receipt of objections to the appropriation was Friday 13th April 2018.
- 2.52 The appropriation notice advised individuals how they could lodge an objection to the process, which was in writing to the Service Director by the objection deadline date of 13th April 2018.

The response to the Appropriation process

2.53 A total of 51 responses to the appropriation process were received, of which 50 were from separate individuals (as one individual submitted two forms of objection). The following provides a summary of the number and nature of the responses received:

- 38 responses were received before or were posted by the deadline date (and received within a few days of the following week by post);
- 13 responses were clearly dated after the 13th April deadline;
- 48 objections were received in a standard objection letter template, each with the same wording but signed and dated by separate individuals. A further two objections were variations of the standard template used by objectors but received in letter format. The presumed author of one of the variant letters also signed a standard template objection;
- Approximately half of the objections were received from within the Kirklees boundary, with the other half being received from outside Kirklees including Leeds, Exeter, Lowestoft, Bristol, Sheffield, Newcastle, Fife, Cambridge, Stratford on Avon and Middlesbrough;
- One letter of support was received in support of the proposed appropriation from an existing plot holder at Cemetery Road.

2.54 As detailed above, 48 objections were in a standard template form that was downloadable from the Friends of Cemetery Road Allotments Facebook page (shown at **Appendix E**). The following paragraphs detail the ten (10) reasons for objecting to the appropriation process, together with a response to each point prepared by the Capital Delivery Team:

2.54.1 Reason 1:

Plot holders who are forced to 'migrate' to alternative plots will have no more security of tenure than before and, therefore, all plot holders may be moved again, in the same way, at any time.

Response to Reason 1:

The statement regarding future security of tenure is correct but has always applied. Existing tenancy agreements allow the Council to provide notice of either 3 or 12 months depending on the circumstances relating to the reason why the land is required for other purposes. The re-location process has involved detailed discussions with plot holders and a degree of choice regarding their new location on the existing site. The remaining site will still be designated as general estates land being used for temporary allotments and therefore it is possible, though unlikely, that a future move could be required. However, no further

development of the remaining site is anticipated and the nature of the land does not lend itself to future development.

2.54.2 Reason 2:

The area of proposed appropriation makes a significant contribution to the wildlife habitat of the Urban Green Space designated in the Kirklees Local Plan.

Response to Reason 2:

The area of proposed appropriation is not being lost to buildings but instead is being primarily converted to playing fields. An ecological survey was commissioned in August 2016 and the subsequent report provided a range of professional opinions and recommendations. No evidence was found to show that creatures such as amphibians, barn owls, badgers, dormice or creatures associated with watercourses were present and that the habitats were generally not suitable for these creatures. The report noted that, although no evidence was found, it was considered possible that there could be foraging bats and that development proposals should consider the retention of trees, which has been done.

The report also provided guidance on measures to be taken that would protect various types of wildlife during the process of redevelopment in the unlikely event that any are found and these will be incorporated as obligations in the building contract, for example facilitating the movement of badgers, hedgehogs and reptiles across the site or moving them to safe places if found on site.

In terms of habitat the report describes the allotments as comprising areas of bare ground, dense scrub, scattered scrub and species poor semi-improved grassland. The allotment areas are not considered to be of importance to nature conservation above site level.

The new school development proposals include extensive planting such as bushes, flowering plants and new trees including fruit trees on what are currently areas of grassland. As a matter of course the new development will conform with the requirements of the Wildlife and Countryside Act 1981 so, for example, birds are protected from disturbance in the nesting season.

2.54.3 Reason 3:

The allotments as a whole provide areas for community support services.

Response to reason 3:

The objection does not define what is meant by community support services. The existing site in total has 82 plots of which 36 are vacant, with many overgrown. 22 of the vacant plots are on the lower site that is unaffected by the appropriation. Extensive works have been undertaken

by the Council to clear 18 vacant plots, level them, providing infrastructure such as supporting walls, access to water and paths and each cleared plot with have a shed or greenhouse, if requested. Four vacant plots remain for allocation to new tenants. This work has rationalised and improved the quality of the Cemetery Road Allotments site, Huddersfield and provides the infrastructure for continued community use.

2.54.4 Reason 4:

The proposed new “Brambles” Primary School Academy has expressed an interest in using an area at the top of the allotments, close to the school, for Forest School activities/a nature study area, cultivation, which under current plans will be converted into a ‘playing pitch’.

Response to reason 4:

The leadership team of the new Brambles Primary Academy has confirmed that it intends to become a Forest School, which is a process that offers all learners regular opportunities to achieve and develop confidence and self-esteem through hands on learning experiences in a woodland or natural environment with trees.

The new location of the school is ideal for this purpose. On either side of the school there are two sets of allotments – Cemetery Road Allotments and Highfields Allotments – both of which have vacant plots that could be used by the school. The surrounding site is an open grassed area with multiple trees and bushes. Within the fenced school grounds there will be a number of outdoor areas with flowers, planting and trees such as wild cherry and crab apples. This will provide the school with an opportunity to undertake Forest School activities within the school grounds, in the surrounding environment and in either of the Allotments sites should it choose to do so.

2.54.5 Reason 5:

Playing pitches could be accommodated, as close to the new school, on the south, south east side of Highfields’ playing fields.

Response to reason 5:

The surrounding playing fields are in the ownership of Greenhead College and they wish to retain these fields for the sole use of College students as part of its sports curriculum offer. In addition, if the fields had been in Council ownership this would not have enabled the Council to meet Sport England requirements to replace the playing field lost to the development with replacement provision of at least equal quantity and quality. The appropriation of the defined area of Cemetery Road Allotments, Huddersfield enables the Council to deliver a solution within the Council’s ownership and meet Sport England requirements.

2.54.6 Reason 6:

As far as I know, Kirklees Council has not made an application to the Secretary of State for consent to dispose of land forming part of Cemetery Road Allotments for non-allotment purposes as I believe is required to do so by law.

Response to reason 6:

An application to the Secretary of State is only required in the case of statutory allotments and, as detailed extensively above in the parts of this report that cover legal matters, the Cemetery Road Allotments, Huddersfield are not statutory. This therefore means that the approval of the Secretary of State is not required.

2.54.7 Reason 7:

The appropriation process must be suspended until the correct procedures are established and are followed.

Response to reason 7:

Officers have undertaken extensive research and sought appropriate legal advice before undertaking the appropriation process and are confident that the correct procedures have been applied. It should be noted that in relation to publication of Notices, the Council has gone beyond what is required. There are no grounds for suspending the process as the correct procedures have been followed.

2.54.8 Reason 8:

The allotments are an important community and environmental asset which need to be preserved as part of the inheritance of future generations.

Response to reason 8:

The council is proposing to invest around £11m in a brand new and much-needed 420 place primary school at Clare Hill to serve North Huddersfield including Birkby and Edgerton. This will create an important community facility that will provide excellent learning and sports opportunities for local children for generations to come. The principle of building the school and its associated playing fields, including the loss of a defined area of the Cemetery Road Allotments site, Huddersfield has already been established through the planning process.

It is acknowledged that allotments do play an important role in society but in this instance it needs to be placed in context. As stated previously, the existing allotment has 36 vacant plots, many of which are overgrown, out of a total of 82 plots.

The number of plots being lost to the appropriation process is 34, of which 14 are vacant. Of the remaining 20 plots, these are occupied by

14 tenants as some have more than one plot. Whilst it is acknowledged that the transfer of the existing plot holders to another part of the site will cause disruption for a small number of people, this is, in the opinion of officers, far outweighed by the benefits of the new school.

The plot holders will benefit from a planning condition that states that the Council must implement the following package of measures to ensure that there is an equivalent community benefit to that which was lost:

- All new replacement plots to be dug out/up and prepared for planting to save the new plot holder from having to start again from scratch;
- Replacement of existing sheds/greenhouses that are currently situated on plots to be lost to be either relocated to the owner's new plot or a suitable new shed/greenhouse provided;
- A path to be provided to all allotments set to accommodate a displaced plot holder;
- Any established trees (e.g. apple tree) to be relocated to the owner's new plot – This would need to be dealt with on a case by case basis as each plot holder's circumstances will be different;
- Crop compensation between the crossover period between the old and new allotment in order to assist in the relocation and the phasing of crops.

In reality, the new provision that has been created is better than what currently exists and the remaining site will be better organised / rationalised with significantly less, if any, vacant plots. Please see photographs at **Appendix F**.

2.54.9 Reasons 9 /10:

Tenants of the area proposed for appropriation have paid their rent for 12 months. This year's tenancy agreement expires on the 6 April 2019. Any proposed alteration of tenancy agreements would need to be put into effect after the 6th April 2019, providing the correct procedures had been followed by Kirklees Council.

Response to reasons 9 /10:

As stated previously, only 14 tenants are affected by the redevelopment and all of these tenants have been offered a replacement plot within the existing Cemetery Road Allotments site, Huddersfield. Twelve out of the 14 tenants have engaged with the Council to express a plot preference, which will be confirmed following a positive conclusion of the appropriation process. New plots within the remaining section of Cemetery Road have already been created in accordance with the planning condition by the Council's Parks and Open Spaces team.

Tenants' rents and tenancy agreements will therefore not be affected as displaced plot holders will continue to have access to at least one allotment plot, which will also include a significant transition period before tenants will need to relocate plots permanently.

If any tenants have paid their rent in advance they will be given a credit to their new plot rent or arrangements can be made to refund allotment holders if they no longer wish to continue.

Tenancy agreements do allow the Council, if it needs to do so, to provide a period of three months' notice to quit in certain situations as defined within the agreement. The appropriation of land is one such circumstance.

- 2.55 One letter was received in support of the proposal, which was from an existing plot holder on the Cemetery Road Allotments site, Huddersfield. The letter expressed concern about the number of plots that have either been abandoned and are collecting debris or appear to be used for purposes other than growing vegetables or gardening activities. Given the number of un-used and abandoned plots, the plot holder's opinion is that this scheme can only improve the site by reducing the number of available plots and relocating some plot holders to other plots where they will have the bonus of a cleared prepared plot together with a shed.

3. Implications for the Council

3.1 *Early Intervention and Prevention (EIP)*

The new Brambles Primary Academy will provide 420 additional, high quality primary school places to help address the significant shortfall of places for children aged 5-11 in North Huddersfield.

3.2 *Economic Resilience*

The construction of the new school will involve a capital investment by the Council of around £11m which will generate employment and supplies opportunities for local labour and businesses. The new school, when opened, will provide a range of new teaching and non-teaching jobs, both full time and part time, that will benefit the local economy.

3.3 *Improving Outcomes for Children*

The new school will be a light, airy and spacious building providing state of the art facilities that will encourage and inspire children to learn and develop. It will have its own fenced grounds, which will contain all the external facilities needed to stimulate young minds, and will have access to its own playing fields to encourage active involvement in sports and health / well-being activities. The school is set in an environment of trees, playing fields and allotments which will encourage children to explore their natural environment as part of the school's commitment to the Forest Schools programme.

3.4 *Reducing the Demand for Services*

The school will have a main hall, studio and direct access to playing fields, which will encourage the development of healthy children. The

modern, state of the art facilities will provide an excellent opportunity for pupils to achieve and develop into the best young people and adults that they can be.

3.5 *Equalities Impact Assessment*

The Equality Act 2010 places the Council under a duty - the Public Sector Equality Duty - to have due regard to the need to achieve equality objectives when carrying out its functions. Members are reminded that before making any decisions that they have a legal duty to consider the **Equality Act 2010 - Section 149**, which introduced a public sector equality duty that the Council must, in the exercise of their functions, have due regard to the need to:

- (a) eliminate discrimination, harassment and victimisation;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

An Equalities Impact Assessment (EIA) has been carried out on (a) the proposal to build a new school and (b) the loss of 34 allotments. In relation to the new school the Stage 1 EIA indicates the positive impact of this development.

In relation to the loss of 34 allotments, the Stage 1 EIA has indicated that there will be a limited impact on service users. A Stage 2 EIA has therefore been undertaken indicating the consultation and mitigation measures taken to lessen the identified limited impact. The EIAs for this project can be found at <http://www.kirklees.gov.uk/you-kmc/deliveringServices/impactAssessments/impactassessments.asp>)

3.6 Legal Implications

Extensive correspondence has been exchanged between the Council's Senior Legal Officer and representatives of the Friends of Cemetery Road Allotments Group regarding their belief that the above named allotments are statutory, not temporary, and therefore subject to Secretary of State approval and not Cabinet approval.

As outlined extensively above in the parts of this report that cover legal matters, the Council has robustly defended its position that the allotments are temporary but this is not accepted by the Group. There may therefore be a risk that the Group will seek a Judicial Review of this situation. Should this occur Cabinet is requested to authorise officers to

continue to defend the Judicial Review action should it occur. This is to ensure that the proposals for the new school can continue and to minimise any delay in being able to do that.

Legal Services are proceeding with the acquisition of the playing field from Greenhead College using officer delegated powers.

4. Consultees and their opinions

The proposed appropriation of a defined part of Cemetery Road Allotments, Huddersfield has been subject to a consultation process as explained extensively in the sections of this report dealing with the appropriation process and the responses received to that process are detailed with appropriate responses from Officers working on the project.

Ward Members for Greenhead and Newsome have been consulted during the course of the development of the project to build a new school on the Clare Hill playing field site. Members have expressed strong support for the need for the new school and have understood the rationale for the appropriation of part of the allotments. Officers were asked to provide support to the allotment holders and to ensure that they were treated fairly. The planning condition relating to the relocation of the plot holders and the compensation required reflects the discussions held with local Ward Members previously.

5. Next steps

Subject to approval of the recommendations in this report, officers will undertake the work to complete the appropriation process. A further report will be brought to Cabinet in September / October 2018 seeking approval to invest approximately £11m in the provision of these fantastic new school facilities and authority to let a contract to the successful construction contractor.

6. Officer recommendations and reasons

Based on the content of this report, Officers make the following recommendations to Cabinet. Members are asked:

- to note and consider the responses to the non-statutory advertisements appearing in the Huddersfield Examiner on 16, 21 and 23 March 2018 giving notice of the Council's intention to appropriate the land edged blue on the plan at **Appendix B** to the report from general estates purposes to education purposes;
- that having considered the responses, authorise the appropriation of the land edged in blue on the plan at **Appendix B** to the report from general estates / temporary allotment purpose to education purpose to enable the provision of playing fields and other ancillary uses for the new Brambles Primary Academy pursuant to Section 122 of the Local Government Act 1972 with effect from the date that officers complete the formal appropriation;

- to authorise officers to provide a formal three months' notice to quit to the 14 affected plot holders and work with the plot holders to ensure a smooth and stress free re-location to their new plots;
- to authorise officers to defend any Judicial Review in relation to the appropriation decision, if taken, in a manner that protects the Council's stated legal position regarding the current status of the existing allotments as general estates purpose for temporary allotments, not statutory allotments.

Officers make these recommendations as they enable the Council to enact its decision to build a 420 place primary school serving North Huddersfield with associated playing fields and other ancillary provision on the Clare Hill site. This new build school will provide excellent learning facilities and address the Basic Need requirement for additional quality schools places in this part of Huddersfield. The new school will be an important community facility that will serve local families for generations to come.

It is acknowledged that overall 34 allotment plots will be lost but there are 36 vacant plots at present across the whole site. Fourteen plot holders will be displaced but they will be provided with new plots elsewhere within the same site and to a standard set by the relevant planning condition. The need for the new school far outweighs the loss of the temporary allotments and the inconvenience caused to 14 tenants.

7. Portfolio Holders Recommendations

The Portfolio Holders for Learning and Aspiration, Communities and Engagement and Corporate recommends that Cabinet:

- note and consider the responses to the non-statutory advertisements appearing in the Huddersfield Examiner on 16, 21 and 23 March 2018 giving notice of the Council's intention to appropriate the land edged blue on the plan at **Appendix B** to the report from general estates purposes to education purposes;
- having considered the responses, authorise the appropriation of the land edged in blue on the plan at **Appendix B** to the report from general estates / temporary allotment purpose to education purpose to enable the provision of playing fields and other ancillary uses for the new Brambles Primary Academy pursuant to Section 122 of the Local Government Act 1972 with effect from the date that officers complete the formal appropriation;
- authorise officers to provide a formal three months' notice to quit to the 14 affected plot holders and work with the plot holders to ensure a smooth and stress free re-location to their new plots;

- authorise officers to defend any Judicial Review in relation to the appropriation decision, if taken, in a manner that protects the Council's stated legal position regarding the current status of the existing allotments as general estates purpose for temporary allotments, not statutory allotments.

We make these recommendations as the new Brambles Primary Academy will provide fantastic state of the art facilities, both internally and externally, that will serve generations of children and their families in North Huddersfield. The new school will provide 420 additional high quality primary school places that are required to address a shortfall of places in the area. A new school requires the provision of external playing fields and the appropriation of part of the adjacent Cemetery Road Allotment site, Huddersfield enables the Council to ensure that access to such facilities is delivered on site. This is an important commitment to the health and well-being of the pupils and staff that will use the school.

This will impact on a small number of existing plot holders but measures are being put in place to ensure that the migration to new plots elsewhere on the site, which have been prepared in advance by the Council's Parks and Open Spaces team to comply with the relevant planning condition, will be as efficient and stress free as possible.

8. Contact officers

David Martin – Head of Capital Delivery and Facilities Management
Physical Resources and Procurement Service
Tel: 01484 221000
Email: david.martin@kirklees.gov.uk

Andrew Hoyle – Senior Legal Officer - Legal Services
Tel: 01484 221000
Email: andrew.hoyle@kirklees.gov.uk

9. Background papers and history of decisions

The requirement for the new school and the proposed appropriation of part of the Cemetery Road Allotment site, Huddersfield was approved by Cabinet on 18th October 2016.

10. Service Director responsible

Joanne Bartholomew - Service Director - Commercial, Regulatory and Operational Services
joanne.bartholomew@kirklees.gov.uk
(01484) 221000

11. List of Appendices

Appendix A Indicative visuals of the new Brambles Primary Academy

- Appendix B Plan showing land to be purchased from Greenhead College (edged in red) and temporary allotment land to be appropriated from general estates purposes to education purposes (edged blue).
- Appendix C Land previously transferred to Greenhead College.
- Appendix D Appropriation Notice and site plan
- Appendix E Standard template objection received from 48 individual objectors
- Appendix F Photos of the existing Cemetery Road Allotments site, Huddersfield to be appropriated and the cleared, new plots on the remaining site.

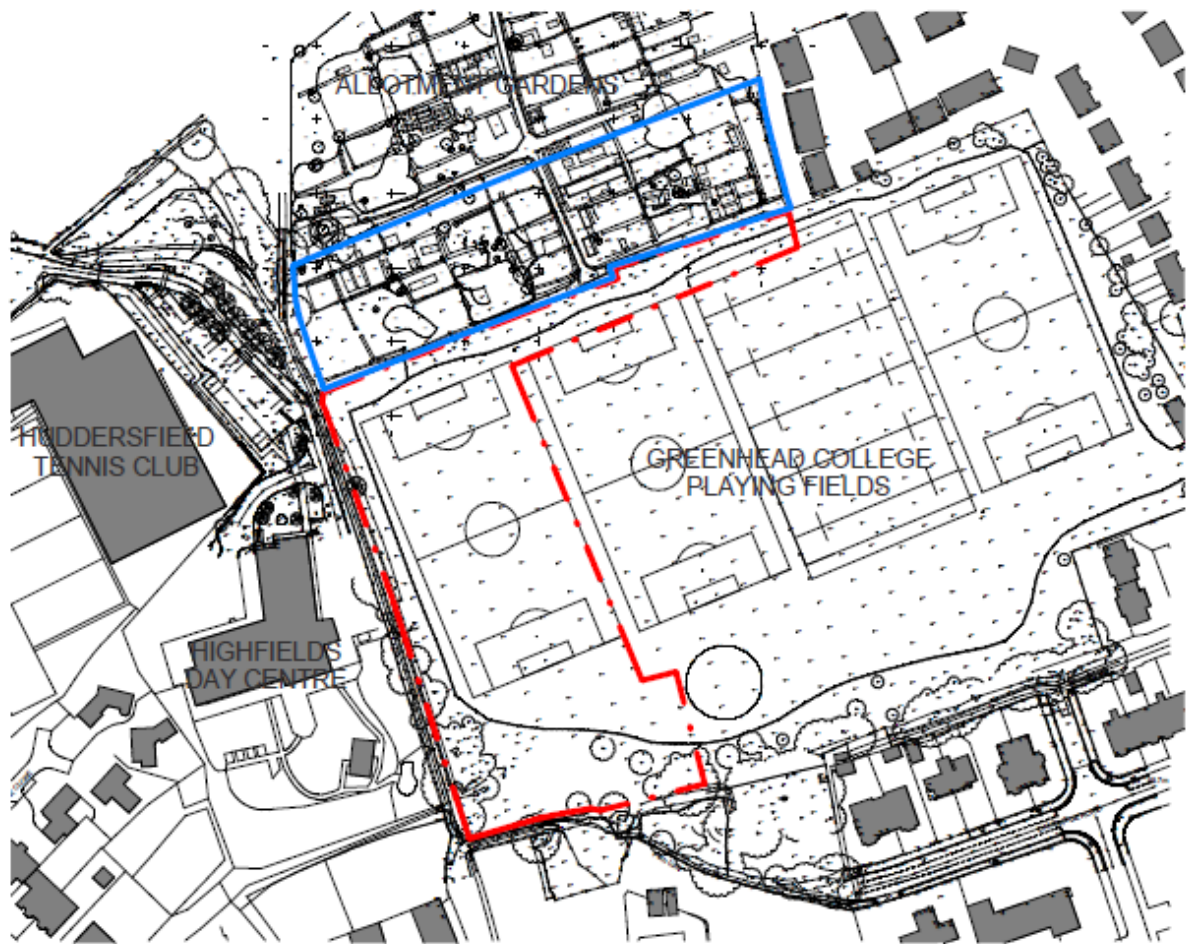
Appendix A





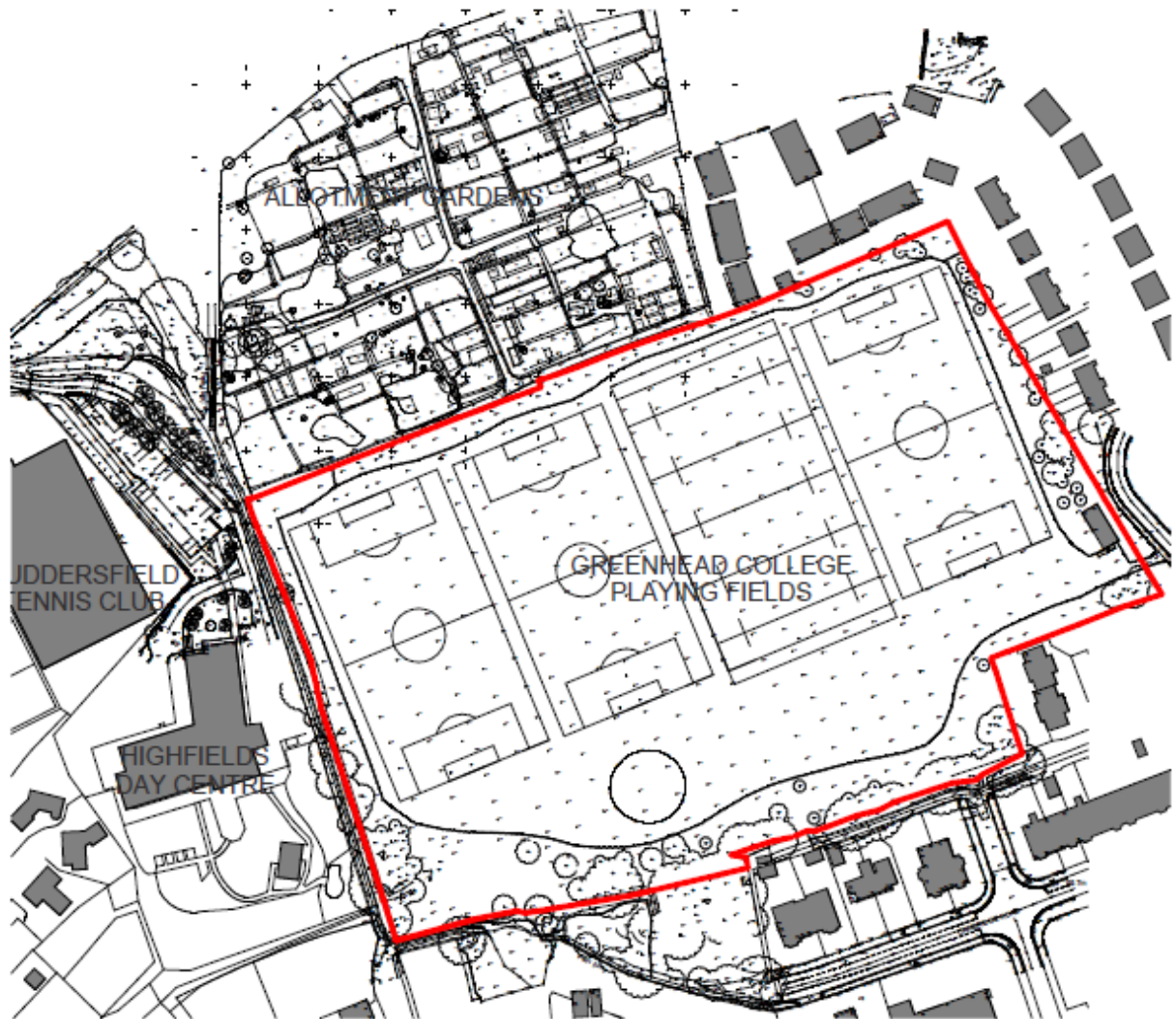
APPENDIX B

Diagram showing Brambles Primary Academy site assembly. The area that Kirklees Council is purchasing from Greenhead College is shown in **red**. Allotment land to be appropriated from general estates purposes to educational purposes for the benefit of the new school is shown in **blue**.



APPENDIX C

Diagram showing Clare Hill playing fields land owned by Greenhead College edged in red



APPENDIX D

**Appropriation Notice Advertised in Huddersfield Examiner
And Site Plan - Area of Cemetery Road Allotments,
Huddersfield for Appropriation**

KIRKLEES COUNCIL

LOCAL GOVERNMENT ACT 1972 - SECTION 122

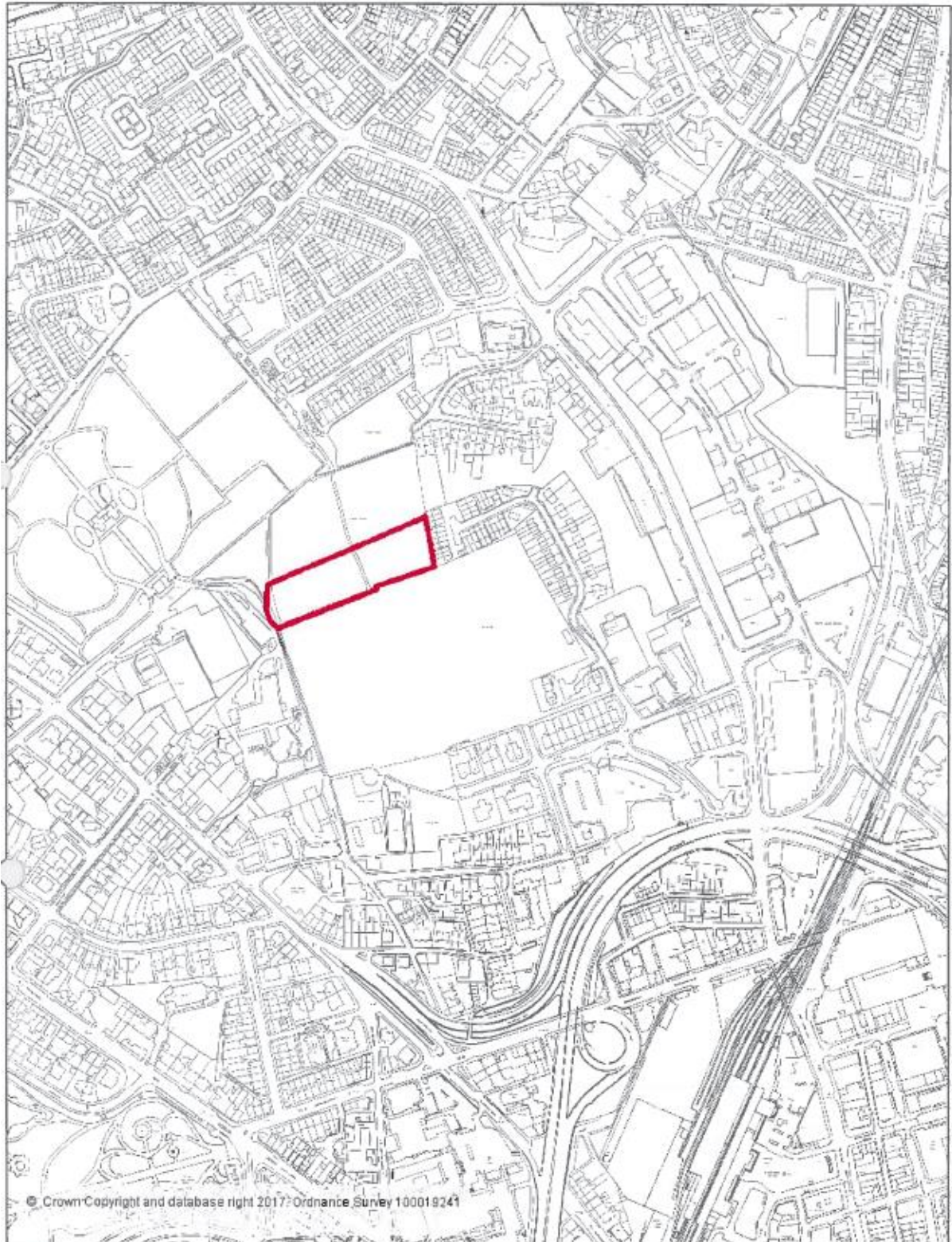
**APPROPRIATION OF LAND OFF CEMETERY ROAD, NEWTOWN,
HUDDERSFIELD**




NOTICE IS HEREBY GIVEN that Kirklees Council intend to appropriate an area of approximately 2 acres of land off Cemetery Road, Newtown, Huddersfield. The land is intended to be appropriated from general estates purposes to education purposes (new school provision).

Any person having any objection to the appropriation should make such objection in writing to the Service Director (quoting reference: DEV/SJH/D70A/463), Legal, Governance and Commissioning, Second Floor, High Street Buildings, High Street, Huddersfield HD1 2ND no later than Friday 13 April 2018, giving full reasons for such objection.

A copy of the plan showing the area in question may be inspected free of charge during normal hours at Customer Services Centre Civic Centre 3, Huddersfield (Monday to Friday 9.00 am - 5.00pm except Thursday 10.00am - 5.00pm) and Legal, Governance and Commissioning, Second Floor, High Street Buildings, High Street, Huddersfield HD1 2ND.

Julie Muscroft - Service Director - Legal, Governance and Commissioning
Kirklees Council, Legal, Governance and Commissioning, Second Floor,
High Street Buildings, High Street, HUDDERSFIELD HD1 2ND



 <p>Kirklees COUNCIL</p>  <p>Kompass Mapping Service</p> <p>Tel: 01484 221757 (tollfree 800 1757) E-Mail: maps@kirklees.gov.uk</p>	<p>Land off Cemetery Road Edgerton</p> <p>0 m 100 m 200 m</p> <p>Scale 1 : 5000</p>	
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APPENDIX E

Standard objection template received from 48 individuals

Julie Muscroft, Kirklees Senior Director – Legal, Governance and Commissioning, Second Floor, High Street Buildings, High Street, Huddersfield, HD1 2ND.

PROPOSED APPROPRIATION OF PART OF CEMETERY ROAD ALLOTMENTS

Local Government Act 1972 – Section 122
Reference: DEV/SJH/D70A/463

OBJECTION

To whom it may concern:

I deplore the proposed appropriation of part of Cemetery Road Allotments and the enforced 'migration' of plot holders to the remaining area of Cemetery Road Allotments.

I note:

1. Plot holders who are forced to 'migrate' to alternative plots will have no more security of tenure than before and, therefore, all plot holders may be moved again, in the same way, at any time.
2. The area of proposed appropriation makes a significant contribution to the wildlife habitat of the Urban Green Space designated in the Kirklees Local Plan.
3. The allotments as a whole also provide areas for community support services.
4. The proposed new "Brambles" Primary School Academy has expressed an interest in using an area at the top of the allotments, close to the school, for Forest School activities/a nature study area, cultivation, outside classroom, etc., which under current plans will be converted into a 'playing pitch' (and/or a car park).
5. Playing pitches could be accommodated, as close to the new school, on the south, south east side of Highfields' playing fields. Therefore, the appropriation of Cemetery Road allotments for playing pitches is unnecessary.
6. As far as I know, Kirklees Council has **not** made an application to the Secretary of State for consent to dispose of land forming part of Cemetery Road Allotments for non allotment purposes, as, I believe, it is required to do by law.
7. The appropriation process **must** be suspended until the correct procedures are established and are followed by Kirklees Council.
8. The allotments are an important community and environmental asset which need to be preserved as part of the inheritance of future generations.
9. Tenants of the area proposed for appropriation have paid their rent for 12 months. This year's tenancy agreement expires on the 6 April 2019.
10. The letter from the "Brambles" School Project Leader, James Mould, dated 15 March 2018, stating tenants have "until the end of October 2018 to vacate [their] existing allotment plots" is inaccurate. Any proposed alteration of tenancy agreements would need to be put into effect after the 6th April 2019, providing the correct procedures had been followed by Kirklees Council until then.

Yours faithfully

Address:

Date:

Photos of existing allotments on upper part of the Cemetery Road Huddersfield site

Plots to be Appropriated (South Section)



Abandoned plots with derelict structures



Abandoned plots



Some active plots but neglected infrastructure



Container with surrounding waste material

Photos of cleared plots on lower part of Cemetery Road Allotments site Huddersfield awaiting installation of sheds / greenhouses

New Plots (North Section)



New gravel path to cleared allotment plots



Cleared and prepared allotment plot with fresh topsoil and new access path



Cleared and prepared allotment plot with new base to accept Council provided shed or greenhouse



Several new cleared and prepared plots with new edge boarding