

**Bracknell Forest Council  
Record of Decision**

<b>Work Programme Reference</b>	<b>I100408</b>
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1. **TITLE:** Land at Coopers Hill

2. **SERVICE AREA:** Resources

3. **PURPOSE OF DECISION**

To recommend the Appropriation of land at Coopers Hill for planning purposes and the engagement of statutory provisions which permit a local authority to override easements and other rights in land that has been appropriated for planning purposes.

4 **IS KEY DECISION** Yes

5. **DECISION MADE BY:** Executive

6. **DECISION:**

1 That the appropriation of the land at Coopers Hill edged red on the plan attached as exempt Annex B of the Chief Executive's report be confirmed for planning purposes under Section 122(1) of the Local Government Act 1972;

2 That the powers to resolve all matters arising therefrom be delegated to the Borough Solicitor;

3 That the Property be redeveloped pursuant to the planning permission 21/00233/FUL or any variations to it or new planning permissions in respect of the property and that the provisions of s203-s206 of the Housing and Planning Act 2016 will apply to override rights, easements and covenants in favour of neighbouring and nearby properties that could be infringed by the development;

4 That delegated authority be granted to the Assistant Director; Property Services in consultation with the Borough Solicitor and the Executive Director: Resources to agree the settlement and documentation of any statutory claims with owners and occupiers of the neighbouring properties, together with any associated fees; to document any associated agreements, deeds of release etc that may be required; and,

5 That the cost of the proposed settlement of compensation payments and associated fees affected by this scheme be met by the Bracknell Forest Cambium Partnership, pursuant to the existing development agreements.

7. **REASON FOR DECISION**

Without the exercise of the Council's appropriation powers, parties who are affected by the diminution of their rights to light or other easements being affected have the ability to bring injunction proceedings to prevent the development of the property. This could potentially halt the project and would result in a delay to the delivery of the development.

As the property is appropriated for planning purposes and the development of the property

will be in accordance with planning permission, section 203 of the Housing and Planning Act 2016 can be invoked to override existing rights without the possibility of injunctive legal proceedings potentially preventing development.

Pursuant to section 204 of the Housing and Planning Act, all affected parties with rights which are overridden are resolved by payment of statutory compensation.

If a claim is made and if agreement on a compensation payment is not reached with any party, the matter can be referred to the Upper Tribunal for determination. The Council has asked for potentially affected parties to contact the Council to advise of their potential claim by 24 August 2021.

The restrictive covenant on the Property contained within a conveyance dated 26 August 1958 and made between Bracknell Development Corporation and the County Council of the Administrative County of Berkshire is being dealt with in a parallel process as regards the interest of Homes England. The Council has been in correspondence with Homes England who are the statutory successors to the original beneficiary of the Restrictive Covenant and a deed of release in respect of the Restrictive Covenant has been agreed between the Council and Homes England. The appropriation powers will not therefore be engaged in respect of Homes England's interest, although the powers will be so engaged for any other potential beneficiaries of the Restrictive Covenant.

#### 8. **ALTERNATIVE OPTIONS CONSIDERED**

The Executive could have decided not to endorse the recommendations. This would mean that the Council may need to develop an alternative approach to development of the property. The business case that informed the Executive's decision to progress a Joint Venture partnership in February 2019 indicated that alternative approaches would be less likely to deliver the agreed objectives.

Not to proceed with the exercise of the Council's rights of appropriation at the property, may have led to delays in the development due to potential injunctions, which may be brought by the possible beneficiaries of any rights or covenants.

9. **DOCUMENT CONSIDERED:** Report of the Executive Director: Resources

10. **DECLARED CONFLICTS OF INTEREST:** Councillor Brunel-Walker declared an interest and withdrew from the meeting, being one of the Council's representatives on the Bracknell Forest Cambium Partnership.

<b>Date Decision Made</b>	<b>Final Day of Call-in Period</b>
31 August 2021	7 September 2021