

***CABINET SUB-COMMITTEE (FTC)  
Regulatory Committee  
Agenda***

Date Thursday 21 February 2019

Time 4.00 pm

Venue Lees Suite, Civic Centre, Oldham, West Street, Oldham, OL1 1NL

- Notes
1. DECLARATIONS OF INTEREST- If a Member requires any advice on any item involving a possible declaration of interest which could affect his/her ability to speak and/or vote he/she is advised to contact Paul Entwistle or Sian Walter-Browne in advance of the meeting.
  2. CONTACT OFFICER for this Agenda is Sian Walter-Browne Tel. 0161 770 5151 or email [sian.walter-browne@oldham.gov.uk](mailto:sian.walter-browne@oldham.gov.uk)
  3. PUBLIC QUESTIONS – Any member of the public wishing to ask a question at the above meeting can do so only if a written copy of the question is submitted to the Contact officer by 12 Noon on Monday, 18 February 2019.
  4. FILMING - The Council, members of the public and the press may record / film / photograph or broadcast this meeting when the public and the press are not lawfully excluded. Any member of the public who attends a meeting and objects to being filmed should advise the Constitutional Services Officer who will instruct that they are not included in the filming.

Please note that anyone using recording equipment both audio and visual will not be permitted to leave the equipment in the room where a private meeting is held.

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MEMBERSHIP OF THE CABINET SUB-COMMITTEE (FTC) IS AS FOLLOWS:

Councillors Fielding, Roberts and Shah

Item No

6 Lower Memorial Park Failsworth (Pages 1 - 28)

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## **Report to Cabinet Sub Committee Acting as Trustees for Lower Memorial Park Failsworth**

### **Lower Memorial Park Failsworth**

**Trustees:** Cllr Fielding, Cllr Roberts and Cllr Shah

**Officer Contact:** Emma Barton – Director of Economy

**Report Author:** Ben Hill – Principal Regeneration Officer  
**Ext. 5261**

**21 February 2019**

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#### **Reason for Decision**

The Council, acting in its capacity as charitable trustee, is required to make resolutions to regularise procedural steps taken regarding works to the Lower Memorial Park Failsworth.

#### **Executive Summary**

As part of the development of the Lancaster Club, Bellway Homes has constructed a drainage attenuation basin and relocated top soil on part of the adjoining Lower Memorial Park Trust/Centenary Fields land. A complaint has been received from a member of the Friends of Moston Brook group concerning the works taking place and the condition of the land as a result of the works.

In September 2018 the Trustees authorised officers to inform the Charity Commission of the serious incident and obtain professional independent advice on the dis-amenity and appropriate compensation resulting from the works.

The Charity Commission has now confirmed that subject to a consultation exercise, it is satisfied in how the Trustees have handled the case and is closing its file. A copy of the correspondence is appended to this report (Appendix 1).

The independent report does not suggest that there should be monetary compensation for any loss of amenity to the trust but the landscape architect has made recommendations with regards to the remediation of the land and the safety of the attenuation basin. The

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independent landscape architect is of the opinion that the ground is capable of fulfilling recreational purposes. A copy of the report can be found at (Appendix 4).

## **Recommendations**

- To note dialogue with the Charity Commission and authorise the disclosure of the decision of the Charity Commission as and when required.
- To note the contents of the independent landscape architect's amenity report and authorise disclosure of the report and consultation with the Friends Group and local residents and wider members of the public on the following:
  - The recommendations in the independent landscape architects report listed in paragraph 2.3 of this report
  - The proposal to transfer additional land to the charitable trust for the Lower Memorial Park Failsworth.

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## **Cabinet Sub Committee Acting as Trustees for Lower Memorial Park, Failsworth**

### **Lower Memorial Park, Failsworth.**

#### **1 Background**

- 1.1 As part of the development of the Lancaster Club, Bellway Homes has constructed a drainage attenuation basin and relocated top soil on part of the adjoining Lower Memorial Park Trust/Centenary Fields land. The approved scheme for the Bellway development included an attenuation pond on charity park land as well as permission to run a foul drainage connection across the land.
- 1.2 Complaints have been received from a member of the 'Friends of Moston Brook' Group regarding the works which have taken place, the current condition of the land and permissions required for the works. There is a concern that members of the local community feel aggrieved with the size of the attenuation basin and the placing of the topsoil.
- 1.3 Shortly before commencing work on site (June 2017), Bellway Homes requested that they layer and re-grade the top soil from the former football pitches over part of the Trust Land. This is only the high quality top soil from the sports pitches and should have been to a depth of around 30 to 45 cm.
- 1.4 Inspections have shown that the soil is in fact to a depth of around 180-150 cm in places. The soil has been levelled and graded into the existing land and creates a consistent surface. Seeding and landscaping is still required to the area around the attenuation basin.
- 1.5 Independent legal advice was obtained on behalf of the Trustees on the steps that the Council and the Trustees should take in the circumstances and in September 2018 the trustees approved the following steps be taken:
  - (i) Report the current situation to the Charity Commission.
  - (ii) Seek independent advice on the damage caused (the extent of the dis-amenity), the extent of financial compensation required in the form of a gift of land to the Charity or other possible remedies.
  - (iii) Discuss the proposed compensation/remedy/gift of additional land with the Friends and consult with the wider public on the proposals.
  - (iv) Consider the independent advice and outcomes of the various consultations.
  - (v) Seek the Charity Commission's approval to the proposed solutions.

#### **2 Current Position**

- 2.1 Legal Services reported the breach to the Charity Commission which included steps to remedy the situation in September 2019. The Charity Commission contacted the Council on 11<sup>th</sup> January requesting clarification on issues around representation with the public, copies of minutes and agendas from meetings held with the trustees

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and our plans to remedy the situation. These were sent to the Charity Commission on 24<sup>th</sup> January.

- 2.2 The Charity Commission contacted the Council again on 6 February and confirmed that they are confident that Trustees have taken the correct steps in reporting the incident to the Commission and that following the recommendations of the independent examiner's report would represent appropriate handling of the case moving forward. Further advice was given that the Trust should consider a consultation exercise to allow public representation on the future of the park. The expectation was that the Trustees should follow the advice. Copies of the correspondence are appended to this report at Appendix 1.
- 2.3 An Independent Landscape Architect, TPM, has completed a Landscape and Amenity Assessment Report a copy of which is appended to this report at Appendix 4. The report provides advice to the trustees generally and in particular in relation to "the terms of the easement and consider appropriate compensation to the charity for any dis-amenity to the land caused by the works taking into account all pertinent events and circumstances including but not limited to the requests of the complainant and any other representations made and the offer by the Council to gift additional land into the trust."
- 2.4 A summary of the reports main findings are:
- The spreading of the topsoil over the land does not alter the openness of the land, nor does it prevent the land from functioning as part of the park in a similar manner as it has done in the past.
  - The topsoil areas should be re-profiled to feather down the edges of the mound to better blend this into the existing topography of the land.
  - This work should be included into the final landscape remediation works for all the area and seeded/planted accordingly to return the land to a semi natural state.
  - The drain connections, easements and topsoil mounding will not prevent access as enjoyed prior to the work commencing.
  - The key route ways through the site will be unaffected and the wider works and land swap have enabled improvements to this path network.
  - Following the completion of the works the area of land covered by topsoil and attenuation pond will be returned to a state and landscaped so as to play a full role in maintaining the local value of the wider park and Moston Brook corridor.
  - The benefits and dis-benefits of fencing off the attenuation area with a timber post and rail fence should be considered, or other landscaping could be considered to create a natural barrier.
  - There is no justification for any level of dis-amenity to justify the council requiring to further transfer land over to the Lower Memorial park trust as compensation.
- 2.5 A meeting took place with the former Leader and representatives from the Friends Group in April 2018 where they requested that the land previously allocated as a Goals! Soccer Centre located between the Memorial Trust land, the Lancaster Club, Broadway and the new allotments should be gifted to and thus become part of the Charity Land. Whilst not a recommendation of the

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Independent landscape Architect the Trustees may wish to consider the option as part of the consultation exercise. This land can be identified as edged red at Appendix 3.

### 3 Options

- 3.1 Option 1 – Follow the advice from the independent landscape architect and the Charity Commission. This may include the gift of additional land, outlined in paragraph 2.5 to the trust.
- 3.2 Option 2 – Do not follow the independent advice from the landscape architect and Charity Commission.

Option 1 is the preferred option.

### 4 Financial Implications

- 4.1 The cost of the Independent Survey was £3,000 which will be met through Regeneration's Professional Fees budget. The cost of additional landscaping works will be met by Bellway Homes when agreed.

### 5 Legal Services Comments

- 5.1 Legal Services have entered into correspondence with the Charity Commission copies of which are appended to this report at Appendix 1. The Charity Commission has approved the Trustees approach so far in seeking the advice of an independent expert to prepare a report and has issued formal advice to the Trustees to consult and seek representations from members of the public on the future of the park. The advice was caveated as follows: ***"This letter constitutes formal advice from the Regulator. Failure to follow this advice, in the absence of a reasoned argument as to why it was not possible or effective to do so, may be considered as misconduct or mismanagement in the administration of a charity"***.
- 5.2 Such consultation has not taken place to date and therefore, Legal Services advise the Trustees to authorise the commencement of the consultation process as a matter of urgency. Legal Services would recommend a consultation exercise of at least one month in duration. The outcome of the consultation exercise should be reported to the Trustees forthwith so that the Trustees can make appropriate decisions. (Elizabeth Cunningham Doyle)

### 6. Co-operative Agenda

- 6.1 Not applicable.

### 7 Human Resources Comments

- 7.1 Not applicable.

### 8 Risk Assessments

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- 8.1 To be informed after the works have been agreed.
- 9 **IT Implications**
- 9.1 Not applicable.
- 10 **Property Implications**
- 10.1 Outlined above.
- 11 **Procurement Implications**
- 11.1 Not applicable.
- 12 **Environmental and Health & Safety Implications**
- 12.1 Outlined above.
- 13 **Equality, community cohesion and crime implications**
- 13.1 Not applicable.
- 14 **Equality Impact Assessment Completed?**
- 14.1 No
- 15 **Key Decision**
- 15.1 Not applicable.
- 16 **Key Decision Reference**
- 16.1 Not applicable.
- 17 **Appendices**
- 17.1 Appendix 1 – Copy correspondence between the Charity Commission and Council.  
Appendix 2- Plan of Lower Memorial Park trust Land  
Appendix 3 – Plan showing land requested by the Friends Group (red edged).  
Appendix 4 - Copy of the report provide by the Independent Landscape Architect, TPM



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**Appendix 1 – Copy correspondence between the Charity Commission and Council.**

**From:** RC Landing & Correspondence (Queue) [<mailto:RCCorres1@charitycommission.gsi.gov.uk>]

**Sent:** 06 February 2019 10:51

**To:** Mark Prestwich

**Subject:** 20190206 - S 15.2 Advice - PF C-491464 CRM:0205070

Dear Trustees

**Ref: Land at Failsworth Lower Memorial Park (1924) (1136597)**

We previously wrote to you on 11/01/2018 to discuss some regulatory concerns we held about the construction of an attenuation pond on Charity land which may have been in breach of the Charity deed, as well as failure on the Charity's part to comply with proceedings laid out in section.121 of the Charity act.

I can confirm we have now received a copy of the independent examiner's report on the landscape value, as well as minutes of relevant meetings and photographs of the site. This is in addition to the RSI report we received on 26/09/2018.

Having assessed the information we have received, we are confident that trustees have taken the correct steps in reporting the incident to the Commission, and that following the recommendations of the independent examiners report would represent appropriate handling of the case moving forward.

We will be still providing formal advice to the Charity as follows:-

**The Charity Commission's role**

As the independent regulator of charities in England and Wales, our aim is to provide the best possible regulation to enable charities to deliver effective services whilst also ensuring compliance with charity law. We do this by working with charities through providing advice and guidance, and setting out best practice to resolve difficulties encountered.

**I have reviewed the case and have formed the view that the Commission can use its powers under S. 15(2) of the Charities Act 2011<sup>[1]</sup>.**

We advise as follows:-

**Trustee Management**

It is the responsibility of trustees to make decisions in the best interest of the Trust, including in relation to assets and land. This includes seeking a proper valuation for dis-amenity to Charity land in future, as well as having proper authorisation for the usage of land for other purposes confirmed and recorded in Trustee meetings. Trustees should ensure that any future projects undertaken involving the land follow Commission guidelines.

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In addition, Trustees must ensure that Charity land is still suitable for recreational purposes. This may involve implementing the recommendations of the Independent Examiner's report.

For more information on Trustee responsibility relating to land and property, please see our published guidance: [Charity Land and Property](#)

For information specific to disposal of Charity land, please see the following guidance: [CC28 - Disposal of Charity Land](#)

## Public consultation

As discussed in our correspondence, the Trust failed to invite representation from the public on the proposal to allow construction on the land. Following the independent examiner's report, the Trustees should consider a consultation exercise to allow public representation on the future of the park.

**This letter constitutes formal advice from the Regulator. Failure to follow this advice, in the absence of a reasoned argument as to why it was not possible or effective to do so, may be considered as misconduct or mismanagement<sup>[2]</sup> in the administration of a charity.**

If we have any further concerns regarding the charity we may re engage at a future date and check that the advice we have given in this letter has been acted upon.

We will now be closing our case

Yours sincerely

**Patrick Foley  
Case Officer  
Regulatory Compliance**

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<sup>[1]</sup> The Commission may, in connection with its second general function, give such advice or guidance with respect to the administration of charities as it considers appropriate. (The Second general function is: Encouraging and facilitating the better administration of charities.)

<sup>[2]</sup> Misconduct includes any act that the person committing it knew (or ought to have known) was criminal, unlawful or improper. Mismanagement includes doing anything to lose or misuse charitable resources, undermine a charity's reputation or put beneficiaries at risk.

W: <https://www.gov.uk/charity-commission>

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**CHARITY COMMISSION  
FOR ENGLAND AND WALES**

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<https://www.gov.uk/government/organisations/charity-commission/about/personal-information-charter>

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**From:** Elizabeth Cunningham-Doyle

**Sent:** 24 January 2019 17:18

**To:** 'RCCorres1@charitycommission.gsi.gov.uk' <[RCCorres1@charitycommission.gsi.gov.uk](mailto:RCCorres1@charitycommission.gsi.gov.uk)>

**Subject:** Lower Memorial Park Failsworth -FW: 20190111 - Commission e-mail to Mark Prestwich - Regulatory Concerns C-491464 - PF CRM:0205052

Dear Mr Foley, thank you for your email addressed to my colleague Mark Prestwich.

The Council notes your concerns with regards to the RSI and has responded to your specific enquiries below, providing you with the additional information which you have requested.

The Council would address your concerns as follows:

Professional Independent advice has been obtained by the Trustees which does not suggest that there should be monetary compensation for any loss of amenity to the trust but the valuer has made recommendations with regards to the remediation of the land and the construction of a post and rail fence. The independent valuer is of the opinion that the ground is capable of fulfilling recreational purposes. The Trustees have not yet had the opportunity of considering the advice of the independent valuer and a meeting of the Trustees will be convened as soon as possible.

In taking professional independent advice the Trustees are seeking to manage any competing public interests and any conflicts/potential conflicts of interests.

The Council has not commenced the process of inviting representations from members of the public even though the Trustees have authorised the consultation exercise. The Council was waiting for confirmation from the Charity Commission with regard to the appropriate way forward. A meeting of the Trustees will be convened forthwith to appraise the Trustees of your concerns and to clarify the scope of the consultation exercise taking into consideration your concerns.

#### **Information required.**

1. Confirmation that the trust has now held representation, and the outcome of this. The Trustees have not yet sought representations from members of the public or the Friends of Moston Brook. A meeting of the Trustees will be convened as soon as possible and the trustees will be advised of your letter and the concerns which you have raised and the outcome of the independent landscape value and amenity report a copy of which is attached to this email. Instructions will be sought from the trustees with regards to the nature and scope of the consultation exercise which is required in view of the advice and recommendations of the independent valuer.

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2. The conclusion of the independent valuation, and the steps taken to recover compensation for funds lost to the charity. Please find attached a copy of the independent landscape value and amenity report provided by TPM which has made clear recommendations with regard to adequate compensation for the loss of amenity regarding the attenuation pond and for the value attributable to the facility to place the topsoil on trust land. The recommendations include re-profiling the topsoil to feather down the edges of the mound to better blend into the existing topography of the land and to complete the final landscape remediation for all the area and to seed and plant accordingly to return the land to a semi natural state. Consideration should also be given to the construction of a timber post and rail fence around the attenuation pond and/or other landscaping option to create a natural barrier to the pond.

Bellway Homes were required to carry out additional works on the trust land to comply with its planning conditions to include the provision of new steps down to Moston Brook to improve access. These works to re-instate the steps have now been completed and these are open to the public.

The Trustees will consider the recommendations for compensation and any other options available at their meeting.

3. Minutes of meetings in which the decision to authorise construction was taken, and minutes of any meetings since where the trust has discussed the failure to follow correct procedures and decisions taken to prevent this in the future. As requested, copies of the relevant reports and minutes of the meetings of the Cabinet Sub Committee ( the Trustees ) held on 29<sup>th</sup> July 2015 and 17<sup>th</sup> September 2018 respectively are attached.

The Council is endeavouring to deal with this RSI in an open and transparent way and welcomes any advice from the Charity Commission to redress this situation.

Kind regards,

Elizabeth Cunningham-Doyle  
Solicitor, Corporate  
Legal and Democratic Services  
Oldham Borough Council, PO Box 33, Civic Centre, West Street, Oldham, OL1 1UL  
T. 0161 770 4840  
F. 0161 770 3701  
Email: [elizabeth.cunningham-doyle@oldham.gov.uk](mailto:elizabeth.cunningham-doyle@oldham.gov.uk)

**From:** RC Landing & Correspondence (Queue) [<mailto:RCCorres1@charitycommission.gsi.gov.uk>]  
**Sent:** 11 January 2019 10:24  
**To:** Mark Prestwich  
**Subject:** 20190111 - Commision e-mail to Mark Prestwich - Regulatory Concerns C-491464 - PF CRM:0205052

Dear Mark

**Ref: Land At Failsworth Lower Memorial Park (1924): 1136597**

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I am writing to you as charity trustee [and contact for the Charity Commission] about a regulatory issue that came to our attention following the receipt of an RSI.

You should bring this letter to all of the trustees' attention.

I am the case officer assessing these concerns - please direct all correspondence to me quoting the above case reference number.

The Commission assesses concerns on a case-by-case basis against its published [Risk Framework](#) and its published guidance 'Complaints about Charities - [CC47](#)'. Both documents are available on our website and explain what types of complaints we will and will not take up.

### **Regulatory Concerns**

Our concerns regard the construction of a water basin on the Lower Memorial Park, and the failure of the charity to follow proceedings laid out in section. 121 of the Charity act. Following receipt of the RSI, we maintain the following concerns:

1. Whether the trust has now invited representation from the public on the next steps of the disposition
2. Has the independent valuation of the land been concluded
3. Has the trust calculated lost funds due to the construction, and have there been steps taken to rectify this
4. Whether the ground is still capable of fulfilling recreational purposes
5. Are there conflicts of interest in the Council being the sole trustee of the park

In order to consider how to progress this matter I require the following information from the charity

### **Information required.**

1. Confirmation that the trust has now held representation, and the outcome of this
2. The conclusion of the independent valuation, and the steps taken to recover compensation for funds lost to the charity
3. Minutes of meetings in which the decision to authorise construction was taken, and minutes of any meetings since where the trust has discussed the failure to follow correct procedures and decisions taken to prevent this in the future.

Whilst these regulatory concerns are being considered, co-operation from the trustees is essential. The trustees' responses are important in deciding what action we may or may not need to take to resolve any issues

If other issues emerge during the course of our engagement with the Charity it may also be necessary to explore these. I will notify you if this is the case.

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## Way forward

I look forward to hearing from you by 25/01/2019. If you cannot meet this deadline, please let me know immediately and before the deadline expires.

Yours sincerely

Patrick Foley

Case Manager – Regulatory Compliance

Charity Commission England and Wales

**Patrick Foley**

W: <https://www.gov.uk/charity-commission>



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**Lower Wernham**

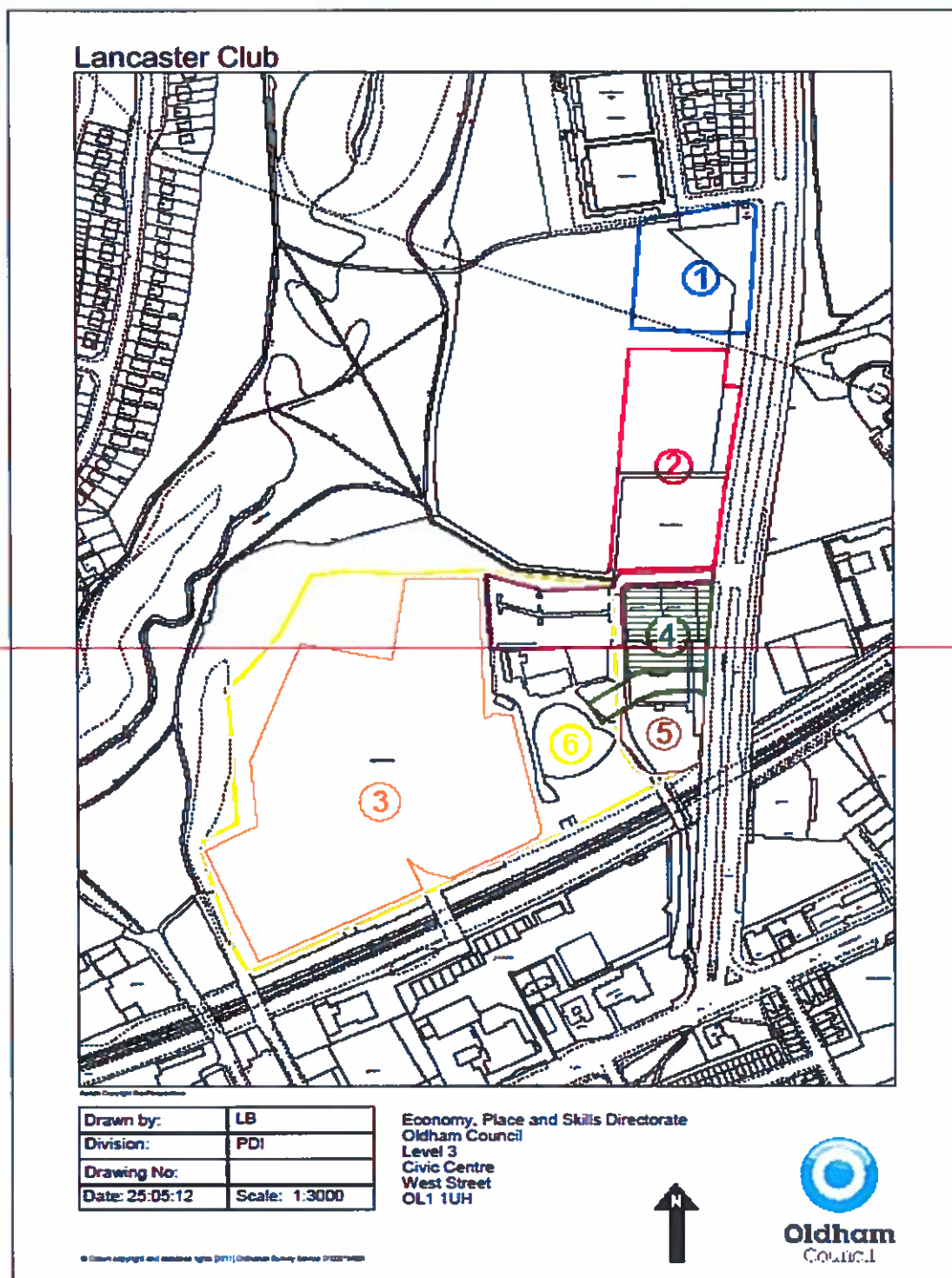
**Unitypartnership**

Scale : 1:2500 Date : 25/11/2016  
Drawing no : Q9 Ref :  
Drawn By :

Unit P2774750  
CSC: Cere  
Plot Size  
Order: 0.1 9.9M

This plan is prepared from OS data and is subject to the permission of Ordnance Survey as to whether or not it is used for other purposes.

Appendix 3 – Plan showing land requested by the Friends Group (edged red).







**CHARITY LAND REPORT**

**LOWER MEMORIAL PARK**

**LANDSCAPE AND AMENITY ASSESSMENT**

**NOVEMBER 2018**

## INTRODUCTION

TPM were approached by Oldham Council to prepare a landscape value and amenity report for Lower Memorial Park Failsworth.

The land is held by the Council under a charitable trust run by Oldham Council members. This is land set aside for the recreational leisure of local residents with permissive pedestrian access throughout with a formal entrance and footpath network running through the site from Broadway down to the Moston Brook waterway.

The Council has been a partner in the development of the adjacent site which it sold to Bellway Homes Ltd and has facilitated the land allocation for the development site, also arranging for a land swap which took odd parcels of land re-arranging ownership to make sense of the final boundaries for the housing allocation and recreational space. The land swap comprised of a piece of land from the Lower Memorial Park land being swapped with land (in Council Ownership) required for the development of the former Lancaster Club site. (see figure 1)

Planning consent was granted by the Council for the development of the former Lancaster Club site to deliver 148 new homes which included the construction of an attenuation pond on the charity park land as well as permission to run a foul drainage connection across the land.

As part of the development of the former Lancaster Club, Bellway Homes have now constructed a drainage attenuation basin and relocated top soil on part of the adjoining Lower Memorial Park Trust/Centenary Fields land.

A complaint has been received from a Member of the Friends of Moston Brook group concerning the works taking place and the condition of the land as a result of the works.

It is alleged that:

- There have been procedural omissions in relation to the granting of an easement over part of the land to include the construction and laying of an attenuation basin and drainage pipes and the dumping of top soil from the neighbouring playing field;
- There has been a loss of amenity to the land caused by the aforementioned works and that this should be remedied through the gifting of additional land to the Lower Memorial Park;
- There is a concern that members of the local community feel aggrieved with the size of the attenuation basin and the placing of the topsoil;
- There is a concern that the attenuation pond as built is unsafe for children.

This report has been conducted by a qualified landscape architect and has been informed by meeting with the local authority and contractor and visiting the site and conducting desk top research as required.

The report seeks to answer the allegations set against the council / trustees in the following way:

- To consider the baseline landscape position both before and after the land swap and planning approval/development;

- To consider the amenity and landscape value of the site before and after the formation of the attenuation pond, drainage easements and topsoil spread; and
- To consider what risk the attenuation pond may form for the future users of Moston Brook.

## **BACKGROUND AND PLANNING POSITION**

The land over which the attenuation pond and topsoil spread are located falls within land that appears to be denoted as Green Corridor and Other Protected Open Land. To the south of this lies land which is not designated in the Local Plan and has been allocated for housing (currently under construction by Bellway Homes)

The original planning permission for 148 homes was granted as an outline permission which indicated the need for a sustainable drainage solution for the site through the creation of an attenuation pond.

The reserved matters application dealing with this matter was approved in May 2016 with an accompanying drainage plan and sections indicating the location, size and depth of the attenuation pond and the proposed drainage connections running to and from this feature. A legal granting of easement document was drawn up dated May 2017 which sets out the areas that will be maintained to manage this SUDS system for the future (essentially the land containing and running above the attenuation pond and drainage pipes enabling access to maintain these features once the land has been returned to use as part of the park) see figure 2.

The proposals for the attenuation pond were accompanied by a landscape and planting proposal that will be executed as part of the Bellway Homes development.

## **CONSIDERATIONS**

The proposals for an attenuation pond as part of a SUDS system for the housing site have been part of the planning proposals from the outset and have been consulted on as part of the normal planning procedure due to such a scheme. As such, both the size, scale and nature of this feature were apparent from 2015 when the original outline application was approved and then further clarified with regards to detail on the submission and successful approval of the reserved matters relating to the attenuation pond, the drainage connections and landscape restoration of these areas following their construction. (see figure 3)

Comments concerning this feature in relation to the Lower Memorial Park suggest that there was broad agreement that the design of the attenuation pond would bring added habitat diversity to the park.

The drainage pipes lie buried beneath the ground and following construction are not visible. The easement areas that subsequently are legally provided for in 2017 are a direct consequence of the approval of the housing site and the approval of the drainage reserved matters. This is necessary to enable the management of these areas remain the responsibility of Bellway Homes and do not fall on the trustees of the park. As such, this arrangement is a benefit to the park ensuring that this land, although returned to the park as open land with some additional ecological benefit, does not incur additional costs to the running of the Lower Memorial Park.

The land, when returned to the park and landscaped as the approved drawings (see figure 3) will remain as open land and continue to fully comply with the relevant policies that concern the land as designated as Other Protected Open Land and Green Corridor.

The spreading of topsoil over the land does not alter the openness of the land, nor does it prevent the land from functioning as part of the park in a similar manner as it has done in the past. Re-profiling of the topsoil may improve the visual appearance of the area and enable a smoother transition from lower areas to those over the mound, this is work that can be easily included as part of the final landscape works over this area.

## **RECOMMENDATIONS AND CONCLUSION**

The topsoil areas should be re-profiled to feather down the edges of the mound to better blend this into the existing topography of the land. This should be then included into the final landscape remediation works for all the area and seeded/planted accordingly to return the land to a semi natural state.

The works of and in relation to the attenuation pond and topsoil spread do not lead to any conflict with the planning status of the former Lancaster Club site and Lower Memorial Park and the land is capable of being returned to the park without any undue financial burden arising from either the need to remediate elements of the land or through the need to maintain these features in the land in the future.

## **LANDSCAPE BASELINE – SITE PRIOR TO DEVELOPMENT**

The site area for the land held by the Council as charitable trustee of the Lower Memorial Park lies to the south of Oldham town centre to the west of Broadway (road) and to the south of Moston Brook.

The landscape setting is one in which Moston Brook runs through an urban townscape with large sections of the watercourse culverted south of the site towards Manchester and north towards Oldham town centre. The Brook runs through a partially wooded valley setting which is designated as an open space area by Oldham Council as part of the Moston Brook Green Corridor. It also falls within Oldham Council's *other protected open land* Policy area which seeks to maintain open land that is not designated Green Belt, open or free of development.

## **PUBLISHED LANDSCAPE ASSESSMENT**

Oldham Council has assessed landscapes within their boundaries through a character assessment dated 2009. In this Moston Brook and the site are held within an area determined as Urban and no further assessment is made.

## **LOCAL LANDSCAPE**

The landscape is a locally valued amenity and wildlife resource providing both natural, semi natural and formal areas of recreation space. This is recognised through its status as other protected open land and as part of the Green Network and Open Spaces of both Oldham and Manchester.

## **ACCESS**

Public access is gained via a formal entrance off Broadway and through the Moston Brook land itself via a public footpath that runs from where Moston Brook travels beneath Broadway travelling west and south towards the Bellway Homes development. The footpath follows the course of the Brook within the lower valley and no formal footpath connections link either the new housing development site or the land over which the attenuation pond, drainage easements and topsoil spread have occurred.

All other access across the site is via permissive paths which include links through the more formally organized recreational space to the north of the attenuation pond and topsoil spread. As part of the land swap deal with the Council and the Lower Memorial Park, steps have been formed running down from these permissive access areas to the formal right of way alongside the Brook.

The site of the attenuation pond and topsoil spread was an area covered in species poor modified grassland or marsh grass.

## **LANDSCAPE VALUE**

The Landscape Institutes Guidelines for Landscape and Visual Impact Assessment 3<sup>rd</sup> edition (GLIVIA) give, in box 5.1, various factors that may be relevant in the assessment of landscape value.

Box 5.1 considers the following factors in assessing whether a landscape is valued: Landscape quality/condition/ Scenic Quality; Rarity; Representativeness; Conservation Interests; Recreation Value; Perceptual Aspects; and Associations.

In considering whether the works constitute a loss of value to the land one must first consider the baseline position from which the land has been taken.

Prior to the development the land comprised open land primarily covered with species poor grassland and/or marsh grass. This is set in the wider landscape of the Moson Brook corridor which includes areas of woodland and wetland associated with the Brook as well as grassland areas with some species diversity in specific locations.

The condition and quality are good-ordinary with the land concerned playing its part in a local wildlife and recreational corridor.

The scenic quality of the Moston Brook corridor is mixed with urban areas being a regular part of the setting and views. The area of topsoil spread and the attenuation pond lie in an area strongly connected to local housing, the busy Broadway road, allotment areas and the new housing development. Although a green corridor through an urban area the park and land do not score highly with regards to scenic quality.

The land and the Lower Memorial Park are not representative of a broader landscape typology although they do play a role as part of the Green Infrastructure Network for Manchester and Oldham.

The land and park are not protected through any statutory designation or wildlife protection such as an SBI and have no dedicated heritage or conservation value.

The Memorial Park has a recreational value but this is through limited formal rights of way relying on informal, permissive access across the whole area.

The perceptual and associative aspects of the land are limited as the area of topsoil spread and attenuation pond was previously open grassland with no specific features or associations of note. Previously the land was used as a tip site with waste still present below the surface.

Although the Lower Memorial Park has local value it scores only moderately with regard to the GLVIA3 test for landscape value. The land under consideration plays a role in this local value but is not distinguishable from any other part through any specific feature, element or characteristic.

## **CONSIDERATIONS**

Following the construction of the attenuation pond and associated drainage and the spreading of topsoil the land will remain within a green corridor set within an urban area and no notable change to the broader landscape character of Oldham or the Moston Brook corridor will occur.

The land will continue to act locally as an open area of land with an enhanced ecological value, within the Lower Memorial Park.

Access will be possible as before across open land with improvements to the formal path network in the park completed as part of the landscape and remediation works connected with the Bellway Homes development, the land swap and the formation of the attenuation pond on park land. The only barrier to free movement will be the attenuation pond itself but this does not lead to any loss of a recognised routeway.

Re-grading of the topsoil mound with the feathering of edges and contours will help blend the soil into the existing contours and enable free movement across this area.

The landscape value of the land is local and moderate. The creation of the attenuation pond adds a feature of potential ecological value which is of benefit rather than dis-benefit.

## **RECOMMENDATIONS AND CONCLUSION**

The topsoil areas should be re-profiled to feather down the edges of the mound to better blend this into the existing topography of the land. This should be then included into the final landscape remediation works for all the area and seeded/planted accordingly to return the land to a semi natural state.

There will not be any loss of landscape value as a consequence of the completed and remediated attenuation pond and topsoil areas, nor will there be any loss of access. The potential for recreation use across the land post mitigation appear broadly the same as before the development.

The works have led directly to improvements to access and path routes in other areas of the park and to an uplift to the habitat and ecological value of the land through the introduction of the attenuation pond.

## **POND SAFETY**

The attenuation pond is designed to hold water only during flood events and for most of the year will remain largely dry with a wetland area at the base of the hollowed out space. There is a limited risk during such periods of flooding commensurate with that of any open area of water, and is in combination with the relatively steep sided banks to the pond.

The attenuation area is not part of a path route or connecting trail and as such is not an area where access is directed.

Attenuation ponds such as this are common features in both housing areas and other developments such as schools. Where access is enabled or unavoidable these areas are sometimes fenced with a simple post and rail fence, this has the double benefit of indicating restricted access to areas prone to flooding and of preventing disturbance to areas of possible future bird nesting and other wildlife habitats.

## **RECOMMENDATIONS AND CONCLUSIONS**

Although not presenting a large risk to safety, the addition of a boundary post and rail fence would dissuade access and protect an area of future wildlife potential from disturbance. This would be weighed against the loss of access to these areas within the park.

Maintenance could be enabled through the addition of a locked gate within the post and rail fencing.

## **SUMMARY AND CONCLUSIONS**

This report sought to answer allegations from members of the Friends of Moston Brook Group through interrogating the following:

- Consider the baseline landscape position both before and after the land swap and planning approval/development;
- Consider the amenity and landscape value of the site before and after the formation of the attenuation pond, drainage easements and topsoil spread; and
- Consider what risk the attenuation pond may form for the future users of Moston Brook.

### Landscape Character

The landscape character of the wider area and more locally the Moston Brook corridor will not be altered through the works. Following completion of the landscape proposals the landscape will return to being a part of the wider Moston Brook green corridor with additional habitat and ecology potential offered through the construction of the attenuation pond.

### Access

Access across the site prior to the works was open and permissive and non-formal with no defined path routes or footpaths. Following the completion of the landscape proposals there will be a small reduction in the potential area accessible by the public due to the attenuation pond but this is offset by the gains to ecology. The drain connections, easements and topsoil mounding will not prevent access as enjoyed prior to the work commencing. Further grading of the topsoil mound will allow for easy movement over this area and assist in helping this additional ground blend in appearance into the existing landscape of rough grassland and marsh grass. The key routeways through the site will be unaffected and the wider works and land swap have enabled improvements to this path network.

### Landscape Value



The landscape value attributable to the land is limited to local influence and moderate in scale. Following the completion of works the area of land covered by topsoil and attenuation pond will be returned to a state and landscaped so as to play a full role in maintaining the local value to the wider park and Moston Brook Corridor.

### Pond Safety

The pond as it stands is designed to hold water only over very limited periods of time and for the majority of the year will have no standing water with a lower level likely to remain wet and plated with wetland plants to exploit this. The sides of the pond are relatively steep and, although a low risk, the potential remains for this to become a high risk feature during periods of flooding. The introduction of a post and rail fence around the pond area would substantially reduce this risk and improve the habitat potential for the area, lessening disturbance.

### Recommendations and Conclusion

The assessment has highlighted two areas where further work would be beneficial in reintegrating the land back into the Lower Memorial Park and Moston Brook corridor, these are:

1. The topsoil areas should be re-profiled to feather down the edges of the mound to better blend this into the existing topography of the land. This should be then included into the final landscape remediation works for all the area and seeded/planted accordingly to return the land to a semi natural state.
2. The benefits and dis- benefits of fencing off the attenuation area with a timber post and rail fence should be considered, or other landscaping could be considered to create a natural barrier.

The works and remaining easements and maintenance/management requirements, although an inconvenience while under construction, are capable of being returned to the wider park without any notable impact upon either the landscape character, landscape value or recreational amenity and opportunities that the land formerly offered.

On completion of the proposed landscaping measures and the suggested further improvement works, the land areas can be integrated back into the Moston Brook corridor and play a full role in its position as open recreational land and green corridor for the benefit of local residents.

I can find no justification for any level of dis-amenity to justify the Council requiring to further transfer land over to the Lower Memorial Park trust as compensation.

In summary and conclusion therefore, it is my view and advice to the Charity Trustees that in order to adequately compensate the Charity for the loss of amenity regarding the attenuation pond and also for the value attributable to the facility to place the topsoil the Trustees should

consider implementing steps 1 and 2 above. It is not necessary in my view to gift additional land to the Charity.

## **APPENDIX**

FIGURE 1 – Land Transfer Plan

FIGURE 2 – Approved Drainage Easements Plan

FIGURE 3 – Approved Attenuation Pond and Planting Plan Details

## Appendix 1

### Lancaster Club





Aerials Copyright GeoPerspectives

Drawn by:	JW
Division:	
Drawing no:	
Date: 07:07:15	Scale: 1:2500

Neighbourhoods Directorate  
Oldham MBC  
Civic Centre  
West Street  
Oldham  
OL1 1UT

#### Legend

-  Land in Trust control to become under Oldham Council control.
-  Land in Oldham Council control to become part of Trust.

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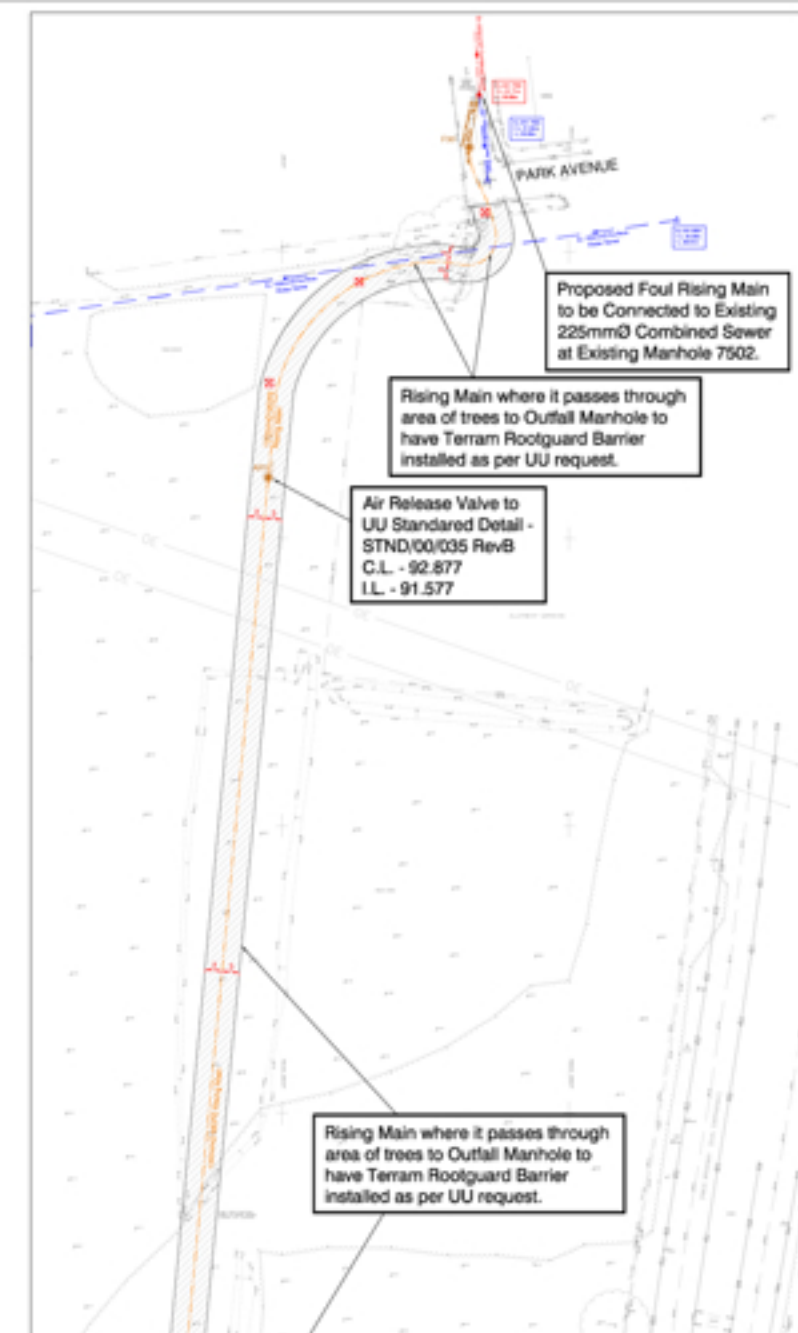
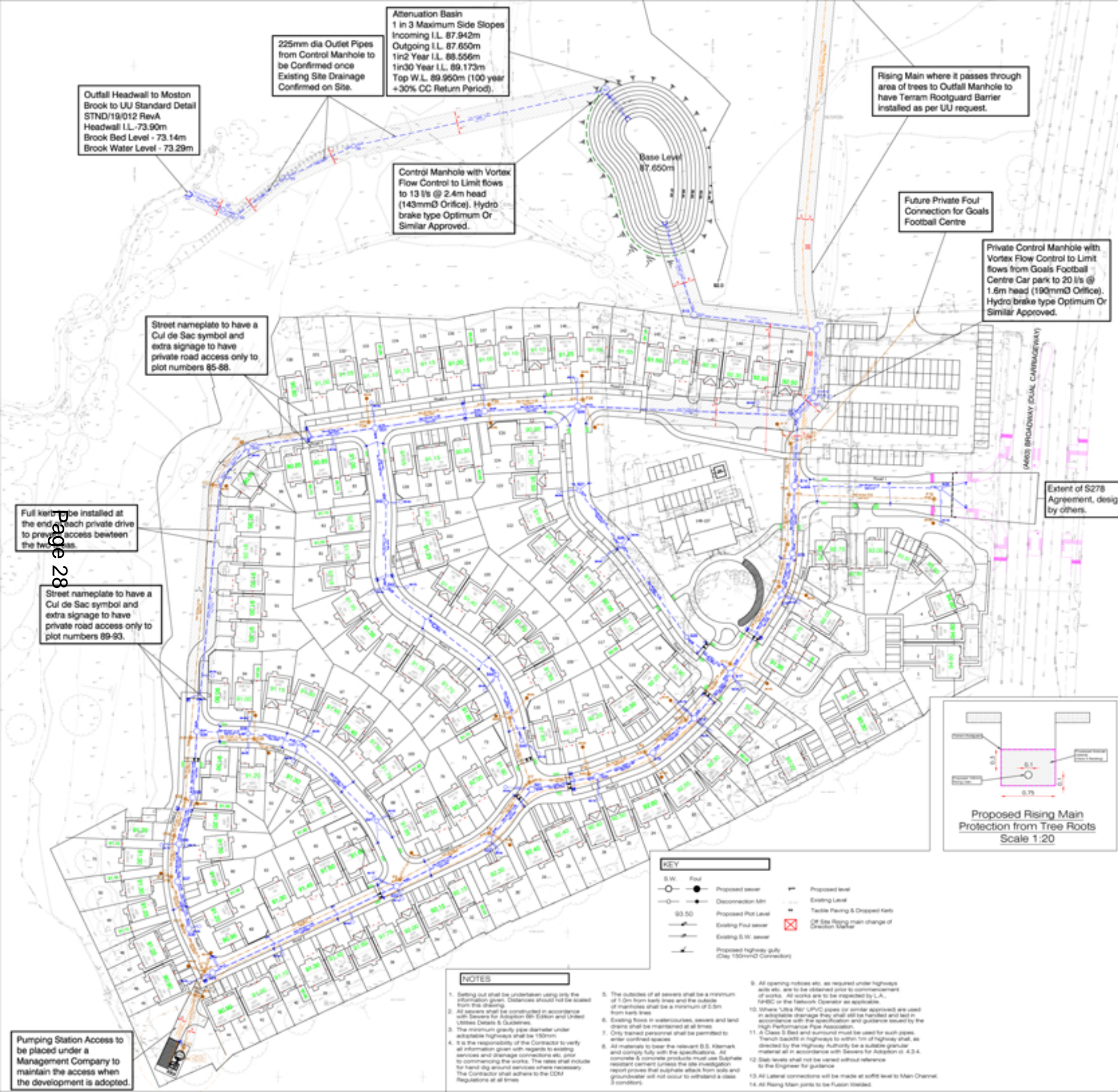












Off - Site Rising Main Layout

S.W. MH REF	S.W. MH C.L.	S.W. MH I.L.	S.W. MH REF	S.W. MH C.L.	S.W. MH I.L.	FOUL MH REF	FOUL MH C.L.	FOUL MH I.L.	FOUL MH REF	FOUL MH C.L.	FOUL MH I.L.
S2	77.440	74.484	S25	91.755	88.882	F2	90.700	87.452	F23	90.400	88.998
S3	79.500	76.637	S26	91.586	89.144	F3	90.650	87.506	F24	90.837	89.297
S4	81.475	78.554	S27	91.235	89.378	F4	90.795	87.625	F25	90.818	89.578
S5	85.891	82.052	S28	90.737	91.807	F5	91.712	88.198	F26	90.956	89.794
S6	89.889	85.904	S29	90.914	88.478	F6	92.151	88.430	F27	91.580	88.735
S7	91.695	87.620	S30	90.636	88.558	F7	91.970	88.580	F28	90.880	88.515
S10	91.181	88.024	S31	90.831	88.730	F8	91.953	89.563	F30	91.700	90.325
S11	92.100	88.131	S32	90.500	88.843	F9	92.264	89.702			
S12	92.490	88.190	S33	90.590	88.880	F10	92.052	89.822			
S13	92.490	88.211	S34	90.771	89.098	F11	91.750	89.987			
S14	92.180	88.350	S35	91.082	89.155	F12	91.731	90.198			
S15	91.871	88.408	S36	91.290	90.197	F13	91.930	90.297			
S16	91.690	88.445	S37	91.301	90.230	F14	92.156	90.412			
S17	91.810	88.526	S38	91.042	89.272	F15	93.621	92.085			
S18	92.007	88.651	S39	90.879	89.430	F16	92.350	90.530			
S19	92.288	88.698	S40	91.039	89.536	F17	91.049	87.852			
S20	91.990	88.751	S41	91.445	89.784	F18	91.254	87.968			
S21	92.060	88.808	S42	91.133	89.054	F19	91.227	88.562			
S22	92.146	88.865	S43	90.908	89.250	F20	91.095	88.151			
S23	91.670	88.955	S44	91.430	89.651	F21	90.805	88.293			
S24	90.805	89.131	S45	91.700	89.813	F22	90.500	88.879			

**REVISIONS**

NO.	DATE	DETAILS
1	01/09/2018	Issued for approval with 2D/3D drawings and Bill of Materials.
2	02/09/2018	As per 1st Revision, amended to include 3D/4D drawings.
3	03/09/2018	As per 2nd Revision, amended to include 3D/4D drawings.
4	04/09/2018	As per 3rd Revision, amended to include 3D/4D drawings.
5	05/09/2018	As per 4th Revision, amended to include 3D/4D drawings.
6	06/09/2018	As per 5th Revision, amended to include 3D/4D drawings.
7	07/09/2018	As per 6th Revision, amended to include 3D/4D drawings.
8	08/09/2018	As per 7th Revision, amended to include 3D/4D drawings.
9	09/09/2018	As per 8th Revision, amended to include 3D/4D drawings.
10	10/09/2018	As per 9th Revision, amended to include 3D/4D drawings.
11	11/09/2018	As per 10th Revision, amended to include 3D/4D drawings.
12	12/09/2018	As per 11th Revision, amended to include 3D/4D drawings.
13	13/09/2018	As per 12th Revision, amended to include 3D/4D drawings.
14	14/09/2018	As per 13th Revision, amended to include 3D/4D drawings.
15	15/09/2018	As per 14th Revision, amended to include 3D/4D drawings.
16	16/09/2018	As per 15th Revision, amended to include 3D/4D drawings.
17	17/09/2018	As per 16th Revision, amended to include 3D/4D drawings.
18	18/09/2018	As per 17th Revision, amended to include 3D/4D drawings.
19	19/09/2018	As per 18th Revision, amended to include 3D/4D drawings.
20	20/09/2018	As per 19th Revision, amended to include 3D/4D drawings.
21	21/09/2018	As per 20th Revision, amended to include 3D/4D drawings.
22	22/09/2018	As per 21st Revision, amended to include 3D/4D drawings.
23	23/09/2018	As per 22nd Revision, amended to include 3D/4D drawings.
24	24/09/2018	As per 23rd Revision, amended to include 3D/4D drawings.
25	25/09/2018	As per 24th Revision, amended to include 3D/4D drawings.
26	26/09/2018	As per 25th Revision, amended to include 3D/4D drawings.
27	27/09/2018	As per 26th Revision, amended to include 3D/4D drawings.
28	28/09/2018	As per 27th Revision, amended to include 3D/4D drawings.
29	29/09/2018	As per 28th Revision, amended to include 3D/4D drawings.
30	30/09/2018	As per 29th Revision, amended to include 3D/4D drawings.
31	31/09/2018	As per 30th Revision, amended to include 3D/4D drawings.
32	01/10/2018	As per 31st Revision, amended to include 3D/4D drawings.
33	02/10/2018	As per 32nd Revision, amended to include 3D/4D drawings.
34	03/10/2018	As per 33rd Revision, amended to include 3D/4D drawings.
35	04/10/2018	As per 34th Revision, amended to include 3D/4D drawings.
36	05/10/2018	As per 35th Revision, amended to include 3D/4D drawings.
37	06/10/2018	As per 36th Revision, amended to include 3D/4D drawings.
38	07/10/2018	As per 37th Revision, amended to include 3D/4D drawings.
39	08/10/2018	As per 38th Revision, amended to include 3D/4D drawings.
40	09/10/2018	As per 39th Revision, amended to include 3D/4D drawings.
41	10/10/2018	As per 40th Revision, amended to include 3D/4D drawings.
42	11/10/2018	As per 41st Revision, amended to include 3D/4D drawings.
43	12/10/2018	As per 42nd Revision, amended to include 3D/4D drawings.
44	13/10/2018	As per 43rd Revision, amended to include 3D/4D drawings.
45	14/10/2018	As per 44th Revision, amended to include 3D/4D drawings.
46	15/10/2018	As per 45th Revision, amended to include 3D/4D drawings.
47	16/10/2018	As per 46th Revision, amended to include 3D/4D drawings.
48	17/10/2018	As per 47th Revision, amended to include 3D/4D drawings.
49	18/10/2018	As per 48th Revision, amended to include 3D/4D drawings.
50	19/10/2018	As per 49th Revision, amended to include 3D/4D drawings.
51	20/10/2018	As per 50th Revision, amended to include 3D/4D drawings.
52	21/10/2018	As per 51st Revision, amended to include 3D/4D drawings.
53	22/10/2018	As per 52nd Revision, amended to include 3D/4D drawings.
54	23/10/2018	As per 53rd Revision, amended to include 3D/4D drawings.
55	24/10/2018	As per 54th Revision, amended to include 3D/4D drawings.
56	25/10/2018	As per 55th Revision, amended to include 3D/4D drawings.
57	26/10/2018	As per 56th Revision, amended to include 3D/4D drawings.
58	27/10/2018	As per 57th Revision, amended to include 3D/4D drawings.
59	28/10/2018	As per 58th Revision, amended to include 3D/4D drawings.
60	29/10/2018	As per 59th Revision, amended to include 3D/4D drawings.
61	30/10/2018	As per 60th Revision, amended to include 3D/4D drawings.
62	31/10/2018	As per 61st Revision, amended to include 3D/4D drawings.
63	01/11/2018	As per 62nd Revision, amended to include 3D/4D drawings.
64	02/11/2018	As per 63rd Revision, amended to include 3D/4D drawings.
65	03/11/2018	As per 64th Revision, amended to include 3D/4D drawings.
66	04/11/2018	As per 65th Revision, amended to include 3D/4D drawings.
67	05/11/2018	As per 66th Revision, amended to include 3D/4D drawings.
68	06/11/2018	As per 67th Revision, amended to include 3D/4D drawings.
69	07/11/2018	As per 68th Revision, amended to include 3D/4D drawings.
70	08/11/2018	As per 69th Revision, amended to include 3D/4D drawings.
71	09/11/2018	As per 70th Revision, amended to include 3D/4D drawings.
72	10/11/2018	As per 71st Revision, amended to include 3D/4D drawings.
73	11/11/2018	As per 72nd Revision, amended to include 3D/4D drawings.
74	12/11/2018	As per 73rd Revision, amended to include 3D/4D drawings.
75	13/11/2018	As per 74th Revision, amended to include 3D/4D drawings.
76	14/11/2018	As per 75th Revision, amended to include 3D/4D drawings.
77	15/11/2018	As per 76th Revision, amended to include 3D/4D drawings.
78	16/11/2018	As per 77th Revision, amended to include 3D/4D drawings.
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80	18/11/2018	As per 79th Revision, amended to include 3D/4D drawings.
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82	20/11/2018	As per 81st Revision, amended to include 3D/4D drawings.
83	21/11/2018	As per 82nd Revision, amended to include 3D/4D drawings.
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86	24/11/2018	As per 85th Revision, amended to include 3D/4D drawings.
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88	26/11/2018	As per 87th Revision, amended to include 3D/4D drawings.
89	27/11/2018	As per 88th Revision, amended to include 3D/4D drawings.
90	28/11/2018	As per 89th Revision, amended to include 3D/4D drawings.
91	29/11/2018	As per 90th Revision, amended to include 3D/4D drawings.
92	30/11/2018	As per 91st Revision, amended to include 3D/4D drawings.
93	01/12/2018	As per 92nd Revision, amended to include 3D/4D drawings.
94	02/12/2018	As per 93rd Revision, amended to include 3D/4D drawings.
95	03/12/2018	As per 94th Revision, amended to include 3D/4D drawings.
96	04/12/2018	As per 95th Revision, amended to include 3D/4D drawings.
97	05/12/2018	As per 96th Revision, amended to include 3D/4D drawings.
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99	07/12/2018	As per 98th Revision, amended to include 3D/4D drawings.
100	08/12/2018	As per 99th Revision, amended to include 3D/4D drawings.

**Project Information**

**Client:** Lancashire Club Broadway, Oldham

**Contract No:** 30153/1

**Scale:** A0

**Drawn by:** [Name]

**Checked by:** [Name]

**Date:** 15/09/2018

**Project Manager:** [Name]

**Project Engineer:** [Name]

**Project Architect:** [Name]

**Project Surveyor:** [Name]

**Project Designer:** [Name]

**Project Drafter:** [Name]

**Project Checker:** [Name]

**Project Approver:** [Name]

**Project Sign-off:** [Name]

**Project Completion:** [Date]

**Project Status:** [Status]

**Project Notes:** [Notes]

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**Client:** Lancashire Club Broadway, Oldham

**Contract No:** 30153/1

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**Checked by:** [Name]

**Date:** 15/09/2018

**Project Manager:** [Name]

**Project Engineer:** [Name]

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**Project Surveyor:** [Name]

**Project Designer:** [Name]

**Project Drafter:** [Name]

**Project Checker:** [Name]

**Project Approver:** [Name]

**Project Sign-off:** [Name]

**Project Completion:** [Date]

**Project Status:** [Status]

**Project Notes:** [Notes]