

NEW FERRY BUTTERFLY PARK – REQUEST FOR COMPULSORY PURCHASE ORDER POWERS

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to seek authorisation to acquire the site of the New Ferry Butterfly Park by exercising Compulsory Purchase Order Powers under Section 226(1)(b) of the Town and Country Planning Act 1990 and not Section 226(1)(a), as previously approved by Members on the 14 January 2010.
- 1.2 The report also updates Members on the position regarding negotiations with the site owner for the purchase of its Freehold interest in the site.

2.0 BACKGROUND

- 2.1 The Butterfly Park (which is shown on the attached plan) is situated on a former railway goods yard at Alma Street in New Ferry.
- 2.2 Since 1993, the two hectare site, has been leased to the Cheshire Wildlife Trust (CWT) by the private sector owner.
- 2.3 The site is designated as of Biological Importance and over 25 species of butterflies have been recorded, 13 of which breed on the site. These include Meadow Brown, Speckled Wood, Peacock, Small Tortoiseshell, Small Copper, Common Blue, Small Skipper, Orange Tip, Holly Blue, Large Skipper, Small White, Large White, Green-veined White. This makes it one of the best butterfly breeding areas in Wirral. The site is also important for educational purposes,
- 2.4 For Members assistance and to remind them of the background to this matter, a copy of the report presented to Cabinet on 14 January 2010 is attached.

3.0 FINANCIAL IMPLICATIONS

- 3.1 It is not possible to quantify the costs of an inquiry because the position that will be taken by the site owners following the serving of a CPO is not yet known. However, if a long inquiry is required the costs could be substantial. Cheshire Wildlife Trust has confirmed that it will initially make available up to £20,000 towards the costs of an inquiry and that in addition it will commence a targeted appeal for further funds to support inquiry costs.

4.0 LEGAL IMPLICATIONS

- 4.1 Members originally resolved that the provisions of Section 226(1)(a) of the Town and Country Planning Act 1990 be used to acquire the site of the Butterfly Park in New Ferry. In essence, this Section gives the Local Authority the power to acquire the land through compulsory purchase if the Authority think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. Since

that date, it has become apparent that the improvements proposed to be undertaken by the Cheshire Wildlife Trust are so modest in scale that it would be unwise to proceed and rely on Section 226(1)(a) of the 1990 Act. That belief is reinforced by the opinion of Counsel.

- 4.2 Accordingly, the more appropriate Section of the 1990 Act to use would be Section 226(1)(b) which allows a Local Authority to acquire through compulsory purchase land which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area. By using this sub-section, the Local Authority will be able to uphold the integrity of the site and maintain the land in its present state.
- 4.3 Members are asked to agree that Section 226(1)(b) be used to acquire the site of the Butterfly Park. The Secretary of State takes the view that an Order made under sub-section 1 of Section 226 should be expressed in terms of either paragraph (a) or paragraph (b) of that sub-section. As these are expressed as alternatives in the legislation, the Order must clearly indicate which is being exercised, quoting the wording of paragraph (a) or (b) of the sub-section as appropriate as part of the description of what is proposed.
- 4.4 Negotiations with the site owner are continuing but there is a difference of view about the basis of the valuation of the site. The site owner is seeking a residential value and the Council is seeking a valuation on the basis of existing use. Negotiations will continue and every possible option will be exhausted prior to the use of a compulsory purchase order. The site owner is continuing to take legal action to remove the Cheshire Wildlife Trust from the site and taking this into account along with the current negotiations then if an agreement cannot be reached by the end of September 2010 a compulsory purchase order may be the action of last resort to seek the desired outcome for the future of this site..

5.0 STAFFING IMPLICATIONS

- 5.1 Existing Staff in the Departments of Law, HR & Asset Management, Corporate Services and Regeneration would be used to take forward a CPO.

6.0 EQUAL OPPORTUNITIES IMPLICATIONS

- 6.1 There are none arising from this report.

7.0 COMMUNITY SAFETY IMPLICATIONS

- 7.1 If the current site is vacated there is a potential for the site to be used for fly-tipping unless the site owners take significant measures to prevent this.

8.0 LOCAL AGENDA 21 IMPLICATIONS

- 8.1 There is none arising directly from the report.

9.0 PLANNING IMPLICATIONS

- 9.1 National Planning Policy in PPS9 (Biodiversity and Geological Conservation) notes in paragraph 9 that sites of local biodiversity interest “have a fundamental role to play in meeting overall national biodiversity targets; contributing to the quality of life and the well-being of the community; and in supporting research and education.” The Government has recently undertaken consultation on a draft PPS on Planning for a Natural and Healthy Environment, which when issued in final form will replace PPS9.

9.2 Locally, pending the adoption of Development Plan Documents under the Council's emerging Local Development Framework, the Unitary Development Plan for Wirral (UDP) (adopted 2000) provides the planning policy framework for the site.

9.3 In relation to the UDP, the Site of Biological Importance (SBI) designation was challenged at the Public Inquiry held during the UDP preparation process (in 1996), by the British Rail Property Board (the then owners), who sought deletion of the SBI notation and its allocation for residential development under Proposal HS1, noting that planning permission had been granted in 1985 for residential development. The Inspector stated in his report that he was satisfied that the site was worthy of listing as an SBI. He considered that "it would appear impossible to develop the site for housing purposes to the extent envisaged by the Objector whilst retaining the SBI status and satisfying the criteria in Policy NC5" (page 281). The proposed allocation for housing was therefore rejected by the Inquiry Inspector.

9.4 In the adopted UDP the New Ferry Butterfly Park is therefore shown as an SBI on the UDP Proposals Map and listed under Proposal NC6 as "NC6/53 - Alma Street Goods Yard, New Ferry". The site additionally falls within the Primarily Residential Area and lies within the Regeneration Priority Area and is thus not subject to the restrictions imposed by the Interim Housing Policy which came into force in October 2005.

9.5 Any proposal for development on the site of the New Ferry Butterfly Park would need to satisfy the requirements of Policy NC5 – the Protection of Sites of Local Importance for Nature Conservation. In addition to stating the Council's commitment to protect habitats of special local importance for nature conservation, it indicates that in evaluating proposals which may affect such habitats, the Local Planning Authority will in particular consider

- The nature, layout and density of development proposed;
- The effect on the long-term ecological viability of the habitat effected;
- The appropriateness of measures taken to minimise damage to the habitat and disturbance to wildlife; and
- The appropriateness of provision for the future maintenance of the site

9.6 The policy goes on to state that development affecting such habitats will only be permitted where the Local Planning Authority is satisfied that the continued ecological viability of the site can be adequately safeguarded by means of appropriate conditions and/or legal agreements.

10.0 **ANTI-POVERTY IMPLICATIONS**

10.1 There are none arising directly from this report.

11.0 **SOCIAL INCLUSION IMPLICATIONS**

11.1 The Butterfly Park is used for educational purposes and this helps to promote social inclusion.

12.0 **LOCAL MEMBER SUPPORT IMPLICATIONS**

12.1 The site is in the New Ferry Ward but this report will be of interest to all Members of the Council.

13.0 **BACKGROUND PAPERS**

- 13.1 National Policy PPS 9
Regional Spatial Strategy
Wirral Council's Unitary Development Plan.

14.0 **RECOMMENDATIONS**

- 14.1 That the use of Compulsory Purchase Order Powers under the Town & Country Planning Act 1990, Section 226 (1) (b) be authorised to acquire the site of the Butterfly Park in New Ferry and that the Authority to proceed under Section 226 (1) (a) as previously resolved be rescinded.
- 14.2 That the Director of Law, HR and Asset Management be authorised to take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order including the publication and service of all notices and the presentation of the Council's case at any public enquiry and acquire all interests in land within the CPO either by agreement or compulsorily.

Jim Wilkie
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