

NEW FERRY BUTTERFLY PARK – REQUEST FOR COMPULSORY PURCHASE ORDER POWERS

1.0 EXECUTIVE SUMMARY

1.1 This report seeks authorisation to exercise Compulsory Purchase Order powers contained within the Town and Country Planning Act 1990 (Section 226(1)(a)) to acquire the site of the New Ferry Butterfly Park from the private landowner to preserve the future of the park for environmental purposes.

2.0 BACKGROUND

2.1 The Butterfly Park (which is shown on the attached plan) is situated on a former railway good 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 Paragraph 10 of this report sets out the Planning Policy Implications.

3.0 THE VIEW OF THE SITE OWNERS

3.1 Brock PLC are dealing with the correspondence relating to this site. The site is owned by Frithmere which appears from the Land Registry search to be a dormant holding company.

3.2 Brock PLC has served a notice on the CWT which means they have to vacate the site by February 2010. In correspondence Brock PLC say that they have tried to find an alternative site for the Butterfly Park and that they will continue to support the CWT. However the owners have no proposals for the site at present and they are not willing to sell the site to a third party.

3.3 The Council has tried on two occasions to arrange a meeting with Brock PLC to discuss the issues around the Butterfly Park but they have refused to meet.

4.0 CHESHIRE WILDLIFE TRUST (CWT)

4.1 CWT are committed to the Butterfly Park because of its biological significance and they have invested in the site over the years. They have plans for future financial investments

to improve the on-site facilities but have been unable to make these because of the uncertainty about the lease position.

4.2 CWT have offered to buy the site from the owners by negotiation but they are not willing to sell it to a third party.

4.3 CWT are challenging the validity of the notice that has been served on them as well as exploring other legal remedies which they may have.

5.0 **FINANCIAL IMPLICATIONS**

5.1 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.

6.0 **LEGAL IMPLICATIONS**

6.1 Section 226 (1) (a) of the Town and Country Planning Act 1990 gives the local authority the power, on being authorised to do so by the Secretary of State, to acquire compulsorily, any land in their area, if the authority think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. In order to exercise that power, the authority must think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects-

(a) the promotion or improvement of the economic well-being of their area,

(b) the promotion or improvement of social well-being of their area

(c) the promotion of environmental well being of their area.

(Section 226(1A) of the Town and Country Planning Act 1990)

6.2 The authority considers that the proposals made by CWT to improve the on-site facilities would contribute to the promotion of the environmental and social well being of the authority's area. The benefit to be derived from exercising the power is not restricted to the area subject to the compulsory purchase order. There is no other appropriate power under which the land can be compulsorily acquired. The authority may acquire land compulsorily under these provisions with a view to selling it on under Section 233 of the Town and Country Planning Act 1990. Appendix A of Circular 06/2004 sets out the factors the Secretary of State would consider when deciding whether to confirm an order. These include whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area and also the potential financial viability of the scheme for which the land is being acquired.

7.0 **STAFFING IMPLICATIONS**

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

8.0 **EQUAL OPPORTUNITIES IMPLICATIONS**

8.1 There are none arising from this report.

9.0 COMMUNITY SAFETY IMPLICATIONS

- 9.1 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.

10.0 LOCAL AGENDA 21 IMPLICATIONS

- 10.1 There is none arising directly from the report.

11.0 PLANNING IMPLICATIONS

- 11.1 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.”
- 11.2 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, together with the North West of England Plan: Regional Spatial Strategy to 2021 (RSS).
- 11.3 The RSS forms part of the Council’s Development Plan: Policy EM1 notes that where proposals affect the region’s natural environment, prospective developers and/or local authorities should first avoid loss of or damage to the assets, then mitigate any unavoidable damage and compensate for loss or damage through offsetting actions with a foundation of no net loss in resources as a minimum requirement. Policy EM1 (B) aims to secure a “step-change” increase in the region’s biodiversity resources...through protecting, enhancing, expanding and linking areas for wildlife within and between the locations of highest biodiversity resources, including statutory and local wildlife sites, and encouraging the conservation and expansion of the ecological fabric elsewhere.
- 11.4 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.
- 11.5 In the adopted UDP the New Ferry Butterfly Park is 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.
- 11.6 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

11.7 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.

12.0 **ANTI-POVERTY IMPLICATIONS**

12.1 There are none arising directly from this report.

13.0 **SOCIAL INCLUSION IMPLICATIONS**

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

14.0 **LOCAL MEMBER SUPPORT IMPLICATIONS**

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

15.0 **BACKGROUND PAPERS**

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

16.0 **RECOMMENDATIONS**

16.1 That the use of Compulsory Purchase Order powers under the Town & Country Planning Act 1990, Section 226 (1) (a) be authorised to acquire the site of the Butterfly Park in New Ferry.

16.2 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.

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