

WIRRAL COUNCIL

CABINET

9 DECEMBER 2014

SUBJECT:	LAND DISPOSALS AT MANOR DRIVE, UPTON AND AT KERR'S FIELD, PASTURE ROAD, MORETON
WARD/S AFFECTED:	LEASOWE & MORETON EAST MORETON WEST & SAUGHALL MASSIE
REPORT OF:	DAVID ARMSTRONG
RESPONSIBLE PORTFOLIO HOLDER:	CLLR ADRIAN JONES
KEY DECISION?	YES

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to seek Members' approval for the disposal of land at Manor Drive, Upton following the Court's decision to uphold the termination of the tenancy. The report also provides an update on the proposals to relocate Upton Park Pony Owners' Association from Manor Drive, Upton to alternative land known as Kerr's Field which is located off Pasture Road, Moreton.
- 1.2 It also seeks approval to enter into an Agreement for Lease/Lease of land at Kerr's Field, Pasture Road, Moreton shown for indicative purposes edged red on Plan 2 annexed to this report for the relocation of the Upton Park Pony Owners' Association.
- 1.3 In addition, approval is also required for the land shown edged red on Plan 2 to be appropriated for planning purposes under section 237 of the Town and Country Planning Act 1990. Appropriation occurs where the Council holds for one particular purpose and it makes a declaration that it is going to hold it for a different purpose. The site is held as open space as part of the North Wirral Country Park which is designated as a Countryside Recreational Site on the UDP Proposals Map.
- 1.4 Section 122 of the Local Government Act requires the Council to advertise the intention to appropriate open space as shown edged red on Plan 2 for two successive weeks in a newspaper circulating in the area. Section 123 of the Local Government Act requires the Council to similarly advertise any proposed disposal of open space land. Any objections need to be notified to the Council for consideration prior to such appropriation or disposal.
- 1.5 Cabinet is therefore requested, subject to there being no objections as referred to in paragraph 1.4 above, to approve the appropriation and disposal

of the land shown edged red on Plan 2 and to approve the appropriation and grant of an Agreement for Lease and Lease. It is further requested that any objections be considered by the Director of Universal and Infrastructure Services in consultation with the relevant Portfolio holder who shall then have delegated authority to determine the appropriation and disposal.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 The land occupied by Upton Park Pony Owners' Association is a 10 acre green site located off Manor Drive, Upton, the freehold is held by Wirral Council. The tenants, Upton Park Pony Owners' Association have been in occupation of the site for approximately 40 years, held under a series of formal tenancies of approximately 3 year periods. In 2000, following extensive public consultation a major part of the land was allocated as a housing development site with the remainder designated as part of the primarily residential area within the Unitary Development Plan (UDP).
- 2.2 The tenants were consulted on the UDP and the resultant categorisation of the Manor Drive site. An alternative Council owned field for the pony club was identified in Meols however, interim planning policies were introduced which restricted the building on greenfield sites, this effectively put any development opportunities on the Manor Drive site on hold.
- 2.3 In July 2012 the Council served a Section 25 notice under the Landlord and Tenant Act 1954 to terminate the tenancy of the land at Manor Drive and offer terms for renewal.
- 2.4 In October 2012 the planning restrictions on the site were lifted which would enable the land to be used in accordance with the UDP designation which makes the decision to dispose of this site a key priority for the Council, as the significant capital receipt will allow investment in other assets Borough wide without the need for revenue borrowing. This would also contribute towards the Borough's ongoing housing land supply.
- 2.5 The tenant failed to apply to Court to protect their tenancy and the Council was able to apply to Court for possession of the land.
- 2.6 On 7 November 2013 Cabinet was asked to consider a number of key sites for disposal including the land at Manor Drive (also known as Fernbank Farm). It was resolved that the decision on the land at Manor Drive be deferred and reconsidered at the next scheduled meeting of Cabinet when the outcome of legal proceedings for possession would be known. This has not been formally reported to Cabinet Members until now due to the continuing discussions with Upton Park Pony Owners' Association.
- 2.7 In February 2014 the Court granted possession to the Council but agreed to suspend the date for possession for a period of up to 12 months to give sufficient time to allow the Club to find a suitable alternative site. The Council indicated at trial that the Council will assist in this process but the Council is not under any obligation to provide an alternative site.

- 2.8 If the Council had not been able to gain possession of the land through the Court the Upton Park Pony Owners' Association could have refused to vacate the site and the opportunity to dispose of the site for residential redevelopment and achieve a substantial capital receipt would have been lost.
- 2.9 The leader of the Council at the meeting of 7 November 2013 requested that officers in Asset Management identify alternative sites for the pony club. In June 2014 a number of sites were identified and these were discussed with the club, unfortunately only one of these sites was thought suitable by the Club for more detailed investigation, this is located off Pasture Road, Moreton and known as Kerr's field.
- 2.10 The 14.8 acres of land at Kerr's Field is shown outlined red on the attached plan (2). The proposal is to offer the Club a 99 year lease of the majority of this land at an agreed rent and subject to such other appropriate terms as are satisfactory to the Council. The proposal is to do this under delegated powers of the Head of Legal & Member Services and Head of Universal & Infrastructure Services.
- 2.11 Kerr's Field, whilst a designated green space, has not formally been declared surplus by Parks and Countryside. It is currently little used and receives minimal council maintenance. It is also a source of some anti-social behaviour. Due to the exposed nature of the proposed site, it is considered that areas 1 and 2 will be made more secure and the condition of the vegetation will be improved and area 3 is recommended for the placement of stables.
- 2.12 Kerr's Field is part of the linear North Wirral Coastal Park, the linear open, nature of the park would remain intact and Leasowe Common which is opposite Kerr's field would remain available for use as green space. As part of the project detailed ecology, flood risk assessment, bird surveys and habitat surveys have been undertaken in consultation with the Environment Agency and Merseyside Environmental Advisory Service. A planning application will be submitted using the evidence gained to seek approval to form a fenced grazing area for horses and to erect a wooden 10 stable block and store room on the flood protected area of the field. The Council would carry out the fencing work, stabling and obtain the necessary planning permission.
- 2.13 An agreement for lease will be drawn up setting out the legal obligations of both parties. Upon completion of the work including the receipt of the planning permission, erection of the stables and fencing around the site the lease will comprise the majority of area 1 and part of area 3 shown on plan 2 however the exact boundaries are still to be agreed. The detailed terms of the agreement/lease are to be agreed by the Head of Universal & Infrastructure Services.
- 2.14 The planning application will be submitted in December and will therefore not be received until early 2015. The land at Manor Drive must be vacated by the Club by 13 February 2015 and the new fencing/stabling at Kerr's Field will

therefore not be completed by this date. It is proposed that the Club are allowed to occupy the land and a temporary stable block under a licence pursuant to the terms of the completed agreement for lease.

- 2.15 The land at Manor Drive, Upton, known as Fernbank Farm including the un-adopted road Fernbank Lane shown on the attached plan (1) will be declared surplus and marketed by the Council's appointed Property Consultants. Redevelopment for new housing would be acceptable in principle in accordance with the Unitary Development Plan and the sale should generate a substantial capital receipt.

3.0 RELEVANT RISKS

- 3.1 The land at Manor Drive, Upton does not attract purchasers or get agreement for development but, shortage in house building land has been recognised. Development of this land is subject to planning conditions and the Council's Housing Development Policy.
- 3.2 Change of use of the land known as Kerr's field, Moreton from public open space to use by the pony club would increase slightly some existing localised green space deficiency for parts of housing areas on the North edge of Moreton and West edge of Leasowe however, much of Moreton and Leasowe would remain within 800m access of North Wirral Coastal Park. The linear nature of the park would remain intact and Leasowe Common which is opposite Kerr's field would remain available for use as green space.
- 3.3 The development of the land known as Kerr's field will require Planning consent. Failure to obtain planning consent would require the pony owners association to make their own arrangements for alternative accommodation for their stabling requirements.
- 3.4 If planning consent is not granted for the proposed work after the club's temporary location to Kerr's field, the lease cannot be completed and the Council will have to regain possession of this land.
- 3.5 The pony club will be required to enter into an "Agreement for Lease" with the Council to ensure the club are contractually obliged to complete a lease following the grant of satisfactory planning consent and completion of the accommodation works.
- 3.6 If an agreement for lease cannot be agreed before the date for possession of the land at Manor Drive, the Council will seek to enforce the possession order and the club will not be permitted to move to Kerr's field.

4.0 OTHER OPTIONS CONSIDERED

- 4.1 Not selling the land off Manor Drive, Upton would significantly reduce the anticipated Capital receipts which would fund other Capital projects. Capital receipts also impact on the amount of money the Council needs to borrow resulting in an increase of revenue expenditure. The land also forms part of its plans to meet housing needs in the borough.

- 4.2 Alternative sites were offered to the pony owners' association but the land known at Kerr's field was the only option the pony owners association were willing to consider.
- 4.3 The option for the Council to remove the pony owners association without assistance to relocate remains.

5.0 CONSULTATION

- 5.1 Upton Park Pony Owners' Association has been consulted throughout this process since the Court order was received.
- 5.2 A range of external agencies have been consulted, including the Environment Agency, Merseyside Environmental Advisory Service as part of the planning approval process.

6.0 OUTSTANDING PREVIOUSLY APPROVED ACTIONS

- 6.1 Cabinet 7 November 2013 refers: the decision on land at Manor Drive be deferred and reconsidered at the next scheduled meeting of the Cabinet when the outcome of legal proceedings will be known.

Cabinet were also made aware of officers being mindful of the interests of Upton Pony Club who had occupied the site for approximately 40 years and whose lease had recently expired. The Council's preference was to work with the pony club over the next year or so to explore suitable alternative sites.

7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 7.1 Upton Park Pony Owners' Association is directly affected by this decision and is regarded as a community group.

8.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 8.1 The estimated capital receipt for the Manor Drive site is in the region of £4m.
- 8.2 The land at Manor Drive, Upton will be marketed for housing development.
- 8.3 The costs of relocating the pony association is estimated to be in the region of £100,000 and will be funded from capital. State Aid implications will be considered if appropriate.
- 8.4 The proposed relocation site will remain in Council ownership with a lease term offered to Upton Park Pony Owners' Association for 99 years at an agreed rent subject to such other appropriate terms as are satisfactory to the Council as referred to in paragraph 2.10 above.

9.0 LEGAL IMPLICATIONS

- 9.1 In February 2014 the Court granted possession to the Council but agreed to suspend the date for possession for a period of up to 12 months to give sufficient time to allow the Club to find a suitable alternative site. The Council indicated at trial that the Council will assist in this process but the Council is not under any obligation to provide an alternative site.

- 9.2 The land at Manor Drive must be vacated by 13 February 2015. If the club do not vacate the land on or before this date the Council will subsequently enforce the possession order.
- 9.3 It is proposed that a 99 year lease of the land at Kerr's Field is offered to the Upton Park Pony Owners Association. An initial agreement for lease will be agreed setting out the legal obligations of both parties as the stabling/fencing at Kerr's Field will not all be completed by the date the club will be required to vacate the Manor Drive site. It is proposed that the club are allowed to occupy the land with a temporary stable block under licence pursuant to the agreement for lease. The Council will be required to complete some of the fencing work by February 2015. Permanent works to Kerr's Field are subject to planning consent.
- 9.4 It is necessary that the land at Kerr's Field be formally appropriated for planning purposes and the required notices under section 122 of the Local Government Act 1972 be served and also that notice for disposal of open space with regards to the land at Kerr's Field be served under Section 123 of the Local Government Act 1972.
- 9.5 The agreement for lease/lease for the land at Kerr's Field and the disposal of the land at Manor Drive, Upton will require the preparation of appropriate legal documentation.
- 9.6 State Aid implications if appropriate will be taken into account to ensure there is no breach of State Aid rules.

10.0 EQUALITIES IMPLICATIONS

10.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(a) Yes and impact review is attached

<https://www.wirral.gov.uk/my-services/community-and-living/equality-diversity-cohesion/equality-impact-assessments/eias-april-2014/eias-chief-executives-d>

11.0 CARBON REDUCTION AND ENVIRONMENTAL IMPLICATIONS

11.1 No carbon reduction implications.

11.2 Environmental implications are being dealt with as part of the planning application process for the proposed relocation site. Any developments at Manor Drive, Upton will be addressed during the planning and development process in due course.

12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

Manor Drive

12.1 The majority of the site at Manor Drive is allocated for residential development with the remainder designated as part of the Primarily Residential Area in the

Council's Unitary Development Plan (UDP). New housing would be acceptable in principle in both these areas.

- 12.2 Proposals to develop at Manor Drive will be subject to UDP Policy HS4 Criteria for New Housing Development, which contains criteria which will require any future scheme to relate well with surrounding property.

Kerrs Field

- 12.3 Kerrs Field is in the Green Belt and is also designated as part of a Countryside Recreational Site in the Coastal Zone and as Washland for the north Wirral floodplain in the UDP. It is also adjacent to a Site of Biological Importance, which contains a number of rare species.
- 12.4 Appropriate facilities for outdoor sport and recreation, which preserve the openness of the Green Belt, are acceptable in principle under UDP Policy GB2 and National Planning Policy Framework.
- 12.5 UDP Policy CO2 only permits proposals that clearly need a coastal location.
- 12.6 UDP Policy LA5 permits non-commercial horse shelters and stables that are not intrusive or prejudicial to nature conservation and provide 0.4 ha of grazing land for each horse.
- 12.7 UDP Policy AG8 includes criteria for assessing commercial equestrian or livery stables, which seeks to prevent new residential accommodation in the Green Belt.
- 12.8 UDP Policy TL9 protects rural attractions and resources, whereas proposals for tourism and visitor facilities for countryside recreation are permitted under the terms of UDP Policies TL10 and TL11.
- 12.9 The National Planning Policy Framework seeks to steer development to areas with lowest probability of flooding. UDP Policies WAT1 and WA1 also seek to prevent risk from flooding for new and existing development.
- 12.10 UDP Policy NCO1 sets out the principles for nature conservation. The impact would need to be screened under the Habitats Regulations as the site is located close to the North Wirral Foreshore Special Protection Area.
- 12.11 The Council's Landscape Character Assessment indicates that the general quality of the area is good and the strategy should be to conserve.

13.0 RECOMMENDATIONS

- 13.1 That Cabinet declares the land off Manor Drive, Upton known as Fernbank Farm as surplus and instructs officers to dispose of the land in accordance with S123 Local Government Act 1972.
- 13.2 That Cabinet declares the area of land at Kerr's field shown edged red on Plan 2 as surplus to requirements and agrees that subject to there being no objections to the disposal of the land at Kerr's field referred to in paragraph 1.4

above that an Agreement for Lease and a 99 year Lease of the land be granted at an agreed rent to be negotiated by the Director of Universal and Infrastructure Services and the Head of Legal and Member Services and upon on terms satisfactory to the Council.

13.3 That Cabinet agrees, subject to there being no objections to the disposal of land at Kerr's field shown edged red be appropriated for planning purposes.

13.4 Any objections received following the public notices of the intended appropriation and disposals shall be considered by the Director of Universal and Infrastructure Services in consultation with the relevant Portfolio holder who shall have delegated authority to determine the relevant appropriations and disposal of land at Kerr's field.

13.5 That Cabinet approves for works to be undertaken at the alternative site Kerr's field, off Pasture Road, Moreton subject to planning approval.

13.6 In the event that possession of the land at Manor Drive, Upton is not given by Upton Park Pony Owners Association by 13 February 2015, that Cabinet approves the enforcement of the court order after 14 February 2015.

14.0 REASON/S FOR RECOMMENDATION/S

14.1 By agreeing to the disposal of the land on Manor Drive, Upton the Council will commence marketing of the site which has the potential to realise a Capital receipt in the region of £4m.

14.2 By having vacant possession of the land at the Manor Drive site ensures that best market value can be achieved.

14.3 By agreeing to a long term lease at an agreed rent this retains the Council freehold interest but allows the security of the pony association for a long period of time, this arrangement also generates revenue income to the Council in line with other similar land use.

14.4 To facilitate the appropriation and disposal of the land at Kerr's field.

14.5 To delegate authority to the Portfolio holder to determine the relevant appropriation.

REPORT AUTHOR:

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APPENDICES

Plan (1) shows land at Manor Drive, Upton

Plan (2) shows land at Kerr's field, Pasture Road, Moreton

BACKGROUND PAPERS/REFERENCE MATERIAL

BRIEFING NOTES HISTORY

Briefing Note	Date

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	7 November 2013