



REPORT TITLE:	MILTON PAVEMENT SITE APPROPRIATION SECOND DECISION
REPORT OF:	ASSISTANT DIRECTOR - CHIEF REGENERATION OFFICER

REPORT SUMMARY

This report seeks approval for the appropriation of land owned by the Council to form part of the Milton Pavements development which is then to be developed by Wirral Growth Company. The appropriation is in accordance with the Option Agreement between Wirral Borough Council and Wirral Growth Company.

RECOMMENDATION

That the Director of Regeneration and Place be recommended to approve the appropriation of land comprising part of the Milton Pavements, Birkenhead development, as identified in paragraph 3.3 of this report, for planning purposes.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 To enable the Council to comply with its legal duties further to the Option Agreement between Wirral Brough Council and Wirral Growth Company, as varied on 15 December 2020, to allow the development of the Birkenhead Commercial District to begin.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Not appropriating the site for planning purposes has been considered but has been rejected as it would not enable the development of the Milton Pavements site. Given the Option Agreement between the Council and Wirral Growth Company and the obligations it places on the Council, the Council could be potentially liable to pay compensation to the Wirral Growth Company were it to not appropriate the land.

3.0 BACKGROUND INFORMATION

- 3.1 In February 2020 Cabinet resolved to approve that the development of the Birkenhead Commercial District take place as detailed in the Wirral Growth Company Partnership Business Plan.
- 3.2 The Council completed the purchase of the Milton Pavements site from Mars Pension Trustees Limited on 4 November 2020. The land was acquired for planning purposes. A planning application for phased redevelopment of land in the Birkenhead Commercial District, including the Milton Pavements development site was submitted by Wirral Growth Company in August 2020. The planning application was approved on 5 August 2021 subject to an agreement under Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972.
- 3.3 The Council entered into an Option Agreement with Wirral Growth Company on 19 March 2019. This was varied by an agreement dated 15 December 2020 to include the Milton Pavements site. As part of the variation it was agreed that the land adjoining Milton Pavement already owned by the Council and forming part of the Milton Pavement development site would be appropriated for planning purposes. The extent of the land is set out hatched black on the plan annexed to this report as Appendix 1 ("Appropriation Land").
- 3.4 The Appropriation Land was formerly public highway. Wirral Growth Company applied for a stopping up order and on 9 August 2021 the Secretary of State made an order authorising the stopping up of the Appropriation Land to come into force on 25 August 2021. A copy of this order is annexed as appendix 2. The freehold of the Appropriation Land is owned by the Council.
- 3.5 The details of how the ownership of the Milton Pavements development site is structured and the common areas to be developed and retained by the Council were set out in a report to Cabinet of 27 July 2020.

- 3.6 It is intended that when works on the Milton Pavements development site commence any third-party rights will be overridden and converted to potential compensation as set out in paragraph 4.1 below.

4.0 FINANCIAL IMPLICATIONS

- 4.1 Any third-party rights that the appropriation overrides when the works on the Milton Pavements development site commence will be converted to a statutory right to compensation from the Council. Wirral Growth Company will provide an indemnity to the Council (to be contained in the agreement for lease for Milton Pavements to be entered into following satisfaction of the conditions under the Option Agreement by Wirral Growth Company) in relation to any potential claims. As such there is no financial impact to the Council.

5.0 LEGAL IMPLICATIONS

- 5.1 Section 122 of the Local Government Act 1972 provides 'The council may appropriate for any purpose for which the council is authorised by statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation.'
- 5.2 The land in question was public highway but a stopping up order was made by the Secretary of State under s247 of the Town and Country Planning Act 1990 coming into effect on 25 August 2021. The challenge period for this order expires on Tuesday 5 October 2021. In the event there is a successful challenge to the order then the Council would have to set aside this decision or appropriate the land back to highway use.
- 5.3 Section 203 of the Housing and Planning Act 2016 states that 'a person may carry out building or maintenance work to which this subsection applies even if it involves interfering with a relevant right or interest ... applies to building or maintenance work where the work is carried out on land that has at any time on or after been appropriated by a local authority for planning purposes' This will be engaged on commencement of the development works enabling Wirral Growth Company to carry out the works notwithstanding any third party rights over the Milton Pavements development site which may exist. Such rights will be overridden by the carrying out of those works and converted into a potential claim for compensation.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 There are no IT, staffing or asset implications arising from this report.

7.0 RELEVANT RISKS

- 7.1 There is a risk that a beneficiary of a third party right that will be interfered with by the works commencing will bring a claim for compensation against the Council. The Council has agreed an indemnity in this regard from Wirral Growth Company, so this risk is appropriately mitigated.

8.0 ENGAGEMENT/CONSULTATION

8.1 Wirral Growth Company conducted public outreach consultation on the proposals for the Birkenhead Commercial District in September 2019 and January 2020.

9.0 EQUALITY IMPLICATIONS

9.1 An Equality Impact Assessment was produced and updated in February 2020. This report makes no changes to this document and it is valid in its current form <https://www.wirral.gov.uk/communities-and-neighbourhoods/equality-impact-assessments>

9.2 In considering this matter due regard has been given to the Council's duty in respect of equalities. It is also relevant that Wirral Growth Company has conducted public consultation as set out in paragraph 8.1 of this report. The Council has therefore duly considered its equality duty.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no significant environment or climate change implications arising from the proposals within this report.

REPORT AUTHOR:

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APPENDICES

Appendix 1- Site plan - This plan shows a piece of former highway land which adjoins Milton Pavements which is owned by the Council and is to be appropriated for planning purposes so that it can form part of the developed area of the Birkenhead Commercial District.

Appendix 2- Stopping up Order dated 9 August 2021

BACKGROUND PAPERS

Supplemental Option Agreement between Wirral Borough Council and Wirral Growth Company (Exempt)

SUBJECT HISTORY

Council Meeting	Date
Cabinet Report on Purchase of Milton Pavements	4 November 2019
Cabinet Report on Wirral Growth Company	24 February 2020
Cabinet Report on BCD AFL and lease	27 July 2020