

## **POLICY AND RESOURCES COMMITTEE**

**Wednesday, 13 December 2023**

<b>REPORT TITLE:</b>	<b>SALE OF LAND AT ARROWE PARK ROAD, UPTON</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF REGENERATION AND PLACE</b>

### **REPORT SUMMARY**

The purpose of this report is to present options to committee for either the retention or sale of land at Arrowse Park Road, Upton to Lidl Great Britain Limited (Lidl) for the sum of £840,000.

Members have previously approved the sale of this site in October 2020 subject to notices being placed for the proposed sale of open space and the appropriation of land. The notices generated objections referenced in this report and the sale was not progressed. Since then, Lidl has increased the offer to purchase the land and changed the red line regarding the site required. Given this change in terms, the objections received previously and the passage of time, it is considered appropriate to bring this matter back to Committee. The Director is mindful of the local objections that the previous decision generated and on closer inspection of the site considers that the development of the site will have a significant impact upon the amenity of local resident.

Members therefore need to consider the impact upon local amenity balanced against the receipt from any sale which will support the Wirral Plan and its delivery through the generation of a capital receipt and promotion of economic activity.

The matter affects the Upton Ward and is a key decision.

### **RECOMMENDATION/S**

Policy and Resources Committee is recommended to consider the following options:

- 1) Agree to sell the land at Arrowse Park Road, Upton (the land) as described at paragraph 3.2 and shown in the red line on the marked Plan. If members are minded to sell the land, to agree, note, declare and/or delegate the following consequential actions:
  - a) Declare the land at Arrowse Park Road, Upton (the land) as defined in paragraph 3.2 and shown in the red line on the marked Plan of this report as surplus to requirements,

b) Appropriate the land from primarily residential use to planning purposes pursuant to Section 122 of the Local Government Act 1972, subject to the outcome of the Council's advertisement of its intention to do so;

c) Approve the disposal of the land to Lidl GB Ltd ("Lidl") at a sale price of £840,000 subject to Lidl securing appropriate planning consent and subject to the outcome of the Council's advertisement of its intention to dispose of public open space in accordance with Section 123 (2A) of the Local Government Act 1972 and to appropriate the land pursuant to section 122(1) of the Local Government Act 1972 and also subject to the consideration of any responses received; and

d) Delegate authority to the Director of Regeneration and Place to:

- i. advertise the intention to dispose of open space in accordance with Section 123(2)A of the Local Government Act 1972 and appropriate the land from primarily residential use to planning purposes pursuant to section 122 of the Local Government Act 1972; and
- ii. consider and determine any responses or objections to the sale following the placing of notices to dispose of open space and appropriate the land to planning purposes; and
- iii. decide whether to proceed with the disposal of the land in light of those responses, if any.

**Or**

2) To retain land at Arrowse Park Road, Upton and not to proceed with declaring it surplus and dispose to Lidl GB Ltd considering information contained in paragraphs 3.2 and 3.3. of the report.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 To enable the disposal of the site to proceed and secure a capital receipt from the sale or to retain the site to protect local amenities.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 The Committee could decide to make the sale not conditional on the grant of planning consent. That would increase the development risk to Lidl and substantially reduce the purchase price that can be realised from this proposed sale.
- 2.2 The Committee could decide to advertise the intended sale of site on the open market.

### **3.0 BACKGROUND INFORMATION**

- 3.1 On 7th October 2020 Policy and Resources Committee approved the sale of the land at Arrowe Park Road, Upton to Lidl GB Ltd (Lidl) for £820,000 plus fees to enable the development of a new supermarket. This followed an earlier decision to sell the land on 16<sup>th</sup> October 2019 by the Cabinet member for Finance and Resources. The October 2020 decision being to report a correction on the extent of land to be sold. Given the effluxion of time it is considered appropriate for the Committee to consider this matter afresh.
- 3.2 The land extends to approximately 3,500 sqm and is shown on the attached heads of terms plan in appendix 1 and edged red on the plan in appendix 2. Appendix 2 also shows photographs of the site. The Land is a landscaped amenity buffer between housing, the fire station and the Upton by-pass. As such the development of the site will have an impact upon local amenity with the loss of open grassed space and several mature trees. If planning permission was secure conditions for enclosure and landscaping would of course seek to mitigate any negative impact upon local amenities. The land is held for housing purposes as it was part of the landholding that was purchased by the Council (or its predecessor) for the purpose of construction of Woodchurch Estate. There are no restrictive covenants on the land preventing the development of the land by Lidl. Lidl has already purchased the neighbouring Fire Station and two semi-detached houses to assemble a larger site which will accommodate the proposed store.
- 3.3 Whilst not material to a decision to sell land or not, if the development was to proceed it is estimated that the store would generate (TBC) full time equivalent jobs and additional business rate income of circa TBC per annum.
- 3.3 The previous decision of Policy and Resources Committee to sell the land (subject to the statutory processes) required the Council to place statutory notices, under Local Government legislation requirements, in the local papers advising of an intention to dispose of open space and also for the appropriation of its use. Following these notices there was a significant response which included 47 direct objections to the notices and a petition with nearly 1000 names objecting to the scheme.

- 3.4 Lidl has remained focussed on acquiring the land and has resubmitted its offer with a higher purchase price, in the sum of £840,000. Other terms remain as per the initial proposal which make their offer conditional on securing planning consent. Within the site are public footpaths which link Arrowe Park Road and Upton Road with Big Meadow Road. To deliver the development Lidl will need to apply for these paths to be diverted at their own cost.
- 3.5 The land is allocated as primarily residential in the Unitary Development Plan and will remain so in the emerging Local Plan but is considered to be open space for the purposes of the Local Government Act 1972. As such the Council is required to advertise an intention to dispose of the land.
- 3.6 The terms of the transaction have been considered by the Council's property consultant and the provisionally agreed terms are considered to reflect best value.
- 3.7 The land in Council ownership is subject to general third-party rights primarily in favour of Magenta Living which were imposed as standard clauses when the stock transfer of Council housing was completed in 2005. The land adjoins former Council houses and all such sites retained in Council ownership which bordered land transferred were burdened with rights in favour of Magenta.
- 3.8 Due to the need to over-ride these rights, the land will need to be appropriated from primarily residential use to planning purposes pursuant to Section 122 of the Local Government Act 1972. Appropriation occurs when the Council holds land for one particular purpose and makes a declaration that it is going to hold the land for a different purpose. This will facilitate its disposal for the proposed use. This may give rise to objections as the intention to appropriate has to be advertised in the local press. Authority is sought therefore to enable the Director of Regeneration and Place to consider any objections and determine the appropriation.
- 3.9 The successful appropriation of the land may give rise to a claim for compensation from Magenta Living but the likelihood is considered to be remote as Magenta own no developable land in the vicinity. In any case, it has been agreed, should a sale proceed with Lidl GB Ltd. that the Company will indemnify the Council against any such claim.
- 3.10 The function of the Council as a landowner is separate to the Council as Local Planning Authority. The proposed transaction is entirely separate to the planning process. It is entirely possible that any future planning decision may be rejected, as this is a completely separate and independent process. Therefore, the land transaction is proposed subject to the grant of planning consent.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 The sale will generate a capital receipt of £840,000 plus a contribution towards the Council's costs. Such a capital receipt could be used by the Council to help meet its liability following the capitalisation directive.

- 4.2 The resultant development will generate Business Rates. These are yet to be calculated, but based on similar premises this could generate in excess of £160,000 pa.
- 4.3 A sale of the land would remove the maintenance liability and the cost of grass cutting which is estimated to be in the region of £450 per annum.

## **5.0 LEGAL IMPLICATIONS**

- 5.1 The Council is obliged to obtain the best price reasonably obtainable under s 123 of the Local Government Act 1972. The provisionally negotiated price reflects the current proposal which combines the land with the other non-Council owned sites and is considered to be well in excess of its value in isolation and is therefore considered to be best price. This has been endorsed by the Council's appointed property consultants.
- 5.2 An intention to sell and appropriate this land will require the appropriate notices being placed in the local press as described in the report.
- 5.3 The proposed decision to dispose subject to planning consent being granted is an industry standard approach and is separate to the planning process, which is conducted independently to land and property transactions.
- 5.4 The Local Government Act 1972 defines open space by reference to the definition given in s336(1) of the Town and Country Planning Act 1990, as "any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground". The land falls within this definition.
- 5.5 The Council has the power to agree to dispose of open space under s123 of the Local Government Act 1972. Under section 123(2A) of the Local Government Act 1972 Act the Council may not dispose of open space unless before doing so it causes notice to be published of the intention to do so, specifying the land in question, and advertising for two consecutive weeks in a local newspaper. The Council must then consider any objections to the proposed disposal.
- 5.6 122(1) of the Local Government Act 1972 enables the Council to appropriate for any purpose for which it is authorised to acquire land by agreement any land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation.
- 5.7 Section 122(2A)A of the Local Government Act 1972 Act provides that a council may not appropriate any land consisting or forming part of an open space unless before appropriating the land it gives notice of its intention to do so for two consecutive weeks, in a newspaper circulating in the area in which the land is situated, and considers any objections to the proposed appropriation. The Council is able to give notice of the intended appropriation and disposal. The advertisements required under s.122(2A) and 123(2A) of the 1972 Act may be published concurrently provided that the notice of intended disposal is worded to effect both these statutory requirements and the Council's intention.

5.8 Section 233 of the Town and Country Planning Act 1990 states that where any land has been acquired or appropriated by a Council for planning purposes and is for the time being held by it, for those purposes, it may dispose of the land to such person, in such manner and subject to such conditions as are expedient in to secure the best use of that land.

5.9 There may be highway diversions required as part of the proposed development. These would be subject to the process of diversion, stopping up or creation orders in respect of any public rights of way under section 257 of the Town and Country Planning Act 1990 associated with any planning application submitted by the Developer. That would be a matter for Planning Committee or would be dealt with as part of a delegated officer decision. Any process for any order under section 257 of the Town and Country Planning Act 1990 would be subject to a separate process of order making and statutory consultation with any objections to any such order being determined by an inspector appointed by the Planning Inspectorate.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

6.1 There are no IT or staffing implications arising from the disposal of this land.

## **7.0 RELEVANT RISKS**

7.1 Failure to complete the deal will result in the potential loss of a capital receipt of £840,000 (subject to planning permission). The Council would not benefit from additional business rates income.

7.2 The successful appropriation of the land may give rise to a claim for compensation from Magenta Living but the likelihood is considered to be slight. In any case, it has been agreed with Lidl that it will indemnify the Council against any such claim. In other words there is no direct risk to the Council.

7.3 Significant local objections to this sale could pose a reputational risk to the Council.

7.4 The Council is seeking to bring forward a range of developments across the Wirral in the short to medium term. The Council has previously taken two decisions on this matter. Choosing to reject this proposal is likely to frustrate the prospective purchaser and could then undermine both the Council's position in the market and reputationally with the supermarket chain and its advisers.

7.5 The local plan sets out the considerable investment and development on the Wirral in the future. A key aspect of delivering the local plan will be the investment in the infrastructure needed for the growth of population, including accessing food retail. In addition to this it also generates opportunities for competition and choice for residents.

7.6 The land in question would be subject to an open space and appropriation notice process and decision. It is possible at this stage that the decision taker would choose not to progress with the sale, having considered any representations received as part of this process. This paper only considers whether the Council would be minded to sell the land or not, subject to the open space notice process and subject to the

outcome of planning. The issue of open space, from a planning perspective, would be considered in the round by the Council as Local Planning Authority if a planning application comes forward. This is a separate process.

- 7.7 It is possible that the Council as Local Planning Authority would not grant permission for the proposal. As a landowner, to mitigate against this risk it is proposed that the transaction will be subject to the independent planning decision of the Local Planning Authority which is separate to this decision. This is a normal step in property transactions and the market.
- 7.8 Should the Council choose not to sell the land, it would be difficult to foresee that the Council would be able to release the land for other uses.
- 7.9 The current proposal is for a disposal which would be conditional on Lidl obtaining planning permission. Lidl could be invited to submit an offer on an unconditional basis, although this would certainly result in a significant reduction in the offer.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 The sale and appropriation of the land will be advertised by way of public Notice as required under the provisions of the Local Government Act 1972.
- 8.2 The sale will be subject to planning consent and the public will be consulted as part of that process.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 There are no direct equality implications from this report.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

- 10.1 The sale of this land will result in the loss of an amenity space. The new food store will be built in accordance with current energy efficiency legislation.

## **11.0 COMMUNITY WEALTH IMPLICATIONS**

- 11.1 A sale of the site as proposed would lead to the construction of a modern foodstore which would create employment opportunities.

**REPORT AUTHOR: Name:** Steven McMorran  
Manager of Assets and Surveying

## **APPENDICES**

Appendix 1 - Heads of Terms  
Appendix 2 – Plan and Site photographs

## **BACKGROUND PAPERS**

Negotiated heads of terms

## TERMS OF REFERENCE

This report is being considered by the Policy and Resources Committee in accordance with (iv) of its Terms of Reference,

“regarding land and property including major acquisition and disposals, which includes reserved decision making concerning any purchase, sale or transfer of a value in excess of, or likely to exceed, £500,000, unless the Committee has delegated this function in relation to a specified area or business plan as the Committee may determine.”

## SUBJECT HISTORY (last 3 years)

<b>Council Meeting</b>	<b>Date</b>
Delegated Member Decision – Sale of Land at Arrowe Park Road, Upton	24 October 2019
Policy and Resources Committee - Sale of Land at Arrowe Park Road, Upton	7 October 2020