

Cabinet

Supplementary Agenda

Date: Tuesday, 19th January, 2010
Time: 2.00 pm
Venue: The Capesthorne Room - Town Hall, Macclesfield SK10 1DX

In accordance with Section 100B(4)(b) of the Local Government Act 1972 the Chairman will be asked to certify the following as an urgent item for consideration at this meeting on the grounds that an early decision is required to facilitate this transaction and the unusual adverse weather conditions meant that it had not been possible to complete the report within the normal timescales.

8. **Item of Urgent Business - Land Adjacent to Fairview Public Car Park, Alsager**
(Pages 1 - 12)

To consider the sale and acquisition of land adjacent to Fairview public car park.

9. **Exclusion of the Press and Public**

The report relating to the remaining item on the agenda has been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matter may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following item pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 5 of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

**PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS
PRESENT**

10. **Item of Urgent Business - Land Adjacent to Fairview Public Car Park, Alsager**
(Pages 13 - 14)

To consider the report of the Borough Treasurer and Head of Assets.

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CHESHIRE EAST COUNCIL

REPORT TO: CABINET

Date of Meeting:	19 January 2010
Report of:	Borough Treasurer and Head of Assets
Subject/Title:	Land adjacent to Fairview public car park, Alsager.

1.0 Report Summary

To consider the sale, in principle, of land adjacent to Fairview public car park to the Co-operative Society and the acquisition of land adjacent to the said car park from the Co-operative Society and Kimberley Developments to enable the redevelopment of the existing Co-operative Retail Store located on Lawton Road, Alsager.

2.0 Recommendations

2.1

- a) To authorise the advertisement of the Councils intention to dispose of the open space shown hatched black on Plan Appendix B
- b) Subject to no objection being received at (a) to approve the sale of land shown hatched black on Plan Appendix B.
- c) To approve the principle of acquisition of land located adjacent to Fairview public car park, Alsager shown cross hatched black on Plan Appendix B from the Co-operative Society and Kimberley Developments for use as a public car park.
- d) To approve the appropriation of a part of the existing Fairview public car park for use as replacement public open space as detailed on Plan Appendix A.
- e) To confirm the appropriation of all other land residual to that referred to in (d) above and currently used as a part of the Fairview public car park for the use as a public car park.
- f) That the principle of sale and acquisition detailed in (a) and (b) above be conditional on the Co-operative Society gaining a planning permission for the redevelopment of the existing Co-operative retail store located on Lawton Road, Alsager.
- g) That the terms and conditions of sale be determined by the Borough Treasurer and Head of Assets and the Borough Solicitor paying particular attention to the obligation under Section 123 of the Local Government Act 1972.

3.0 Reasons for Recommendations

- 3.1 The sale and acquisition of the said land enables the identified retail need within Alsager detailed in 11.2 below to be achieved.

During the course of discussions with the Co-operative Society and Kimberley Developments, acting as their Developer as well as a land owner, approaches have been received from other potential food retail Developers regarding Fairview public car park and adjacent land. However to date from a Planning perspective it is considered that none of the other schemes submitted for pre-application discussion have been capable of meeting planning policy requirements in terms of delivering sustainable, high quality design and protecting the vitality and viability of Alsager town centre. The location and presence of the existing Co-operative Store adjacent to Fairview car park creates a development opportunity which other Developers cannot replicate without the acquisition of adjacent land in current third party ownership. It is considered that even with the acquisition of the said land, other Developers would be unlikely to provide a scheme which better satisfies the aforementioned planning aspirations. Provision of a further supermarket over and above the proposed Co-operative store would lead to the identified retail capacity for Alsager being exceeded which would contravene retail planning policy.

The proposals ensure that the existing public car parking, market provision and play area/public open space provisions are replaced and in certain respects enhanced.

Plan Appendix A shows the current design proposals.

Plan Appendix B shows the existing layout. It identifies land within the ownership of Cheshire East Council and that land required by the Co-operative Society (hatched) and that proposed to be transferred to the Council (cross hatched.)

4.0 Wards Affected

- 4.1 All Alsager wards

5.0 Local Ward Members

- 5.1 Rod Fletcher, Shirley Jones and Derek Hough

6.0 Policy Implications including - Climate change - Health

- 6.1 As per 11.3.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

None

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 8.1 The proposal provides the opportunity to enhance and improve the existing public car parking, market and play area/public open space provisions, the cost of which from both a capital and revenue perspective would otherwise have been borne by the Council in due course.

9.0 Legal Implications (Authorised by the Borough Solicitor)

- 9.1 The Council has an obligation under Section 123 of the Local Government Act 1972 to achieve the best price that can reasonably be obtained. This does not require it to place every piece of land on the open market before it decides to sell it. However, where it does not do so, it needs to be clear about its reasons for not doing so and be prepared to justify its decision, in case of challenge by way of Judicial Review.

In this instance the land in question has not been marketed and this report proposes that the Council deals with a particular developer/owner. To avoid challenge the Council must be able to demonstrate that Kimberley Developments and the Co-operative Society are in a unique position in enabling the Council to achieve the best price possible.

10.0 Risk Management

- 10.1.1 The sale of land has not been offered to the market nor has a formal Development Brief been approved for planning guidance in relation to the potential development of the area. Consequently there is a possible opportunity for potential Developers to challenge the Council's decision to sell land.

Officers consider that such challenges can be countered by reference to two independent valuations being carried out. For the purposes of section 123, case law makes it clear that consideration cannot be taken into account unless it has a commercial or monetary value which is capable of being assessed by valuers. So the desirability to the Council of achieving the retail aspirations required for Alsager which were agreed with the Alsager Town Council and the Alsager Partnership are irrelevant for valuation purposes, even though it is considered highly unlikely that these aspirations can be satisfied by other developers without the acquisition of the current co-operative store or, alternatively, other 3rd party land which would in itself be highly likely to harm the character and appearance of Alsager town centre

11.0 Background

11.1 Site history

- 11.1.1 In October 2005 The Executive of Congleton Borough Council, in response to a request from Alsager Town Council regarding the Council's intent in respect of the ownership of Fairview Car Park, confirmed that it would not make a decision on the future ownership of the Fairview Car Park and adjacent children's play area until planning applications submitted by Kimberley Developments Plc and Capita Symonds on behalf of United Co-operatives Limited had been determined.

In February 2005 the Planning Committee granted a planning permission to United Co-operatives for a Class A1 retail food store and in November 2005 the Planning Committee granted an outline planning permission to Kimberley Developments Plc for the erection of a retail store again on the land in question.

As a consequence of public concerns on the above planning applications and the future of the car park, a public meeting was held at Alsager Civic Hall. In January 2006 following the said meeting the Executive considered a report on the future of the Fairview Car Park site and associated Council owned land.

Decision

(a) That Fairview Car Park in Alsager and associated land be retained within the ownership of the Council pending the outcome of the area action plan assessment detailed below:

(b) That the Chief Planning Officer explore the suitability of an area action plan to determine the future requirements for Alsager town centre and be requested to provide a comprehensive report to Executive at the earliest opportunity on the matter; the report to include all relevant resource implications and delivery timescales.

It was envisaged that the results and conclusions of the area action plan would then provide the basis of decision for the future use of the Fairview public car park and associated land including the Municipal Offices, Civic Centre and potential library site.

In July 2008 the Executive resolved to cease work on the AAP and to produce a Supplementary Planning Document (SPD) for the Town Centre and a Development Brief SPD for the Fairview Car Park site. This was felt to be a more appropriate mechanism for taking forward the development of the town centre.

In anticipation of the above decision a request was received from Kimberley Developments in partnership with the Co-op to purchase an area of the Fairview Car Park/adjacent public open space located off Sandbach Road North, Alsager to enable redevelopment of the existing Co-op Store. Kimberley have offered to provide land to replace that required and have suggested there is only a net loss on to the Councils land ownership of 0.27 acres.

A briefing note detailing the aforementioned request plus interest received from Sainsburys Plc was considered by the Councils Executive in July 2008 and the Executive agreed that they were 'minded to sell' to Kimberley Development.

In making this decision the Executive considered the following representations from the Alsager Town Council and Alsager Partnership;

Alsager Town Council:

The Town Council is still committed to the Town Centre planning process and therefore the Borough Council is urged to continue work on the preparation of the Town Centre Supplementary Planning Document and the Development Plan for Fairview Car Park.

In the mean time it is considered to be appropriate for Congleton Borough Council to continue discussions with Kimberley and the Co-op on their proposal but it is stressed that the Town Council would like to be consulted further before any final decision is taken on the disposal of part of the Car Park to Kimberley Developments and the Co-op.

Any proceeds ultimately resulting in the sale of land at Fairview Car Park should be allocated for development in Alsager.

Alsager Partnership:

That Peter Hall should progress without commitment, negotiations with Kimberley Developments and the Co-op. Once their proposal is completed, it should be presented to the Partnership, Town Council and Congleton Borough Council for further discussion. It is also requested that proceeds from any land sold should be retained and allocated directly for the benefit of the people of Alsager.

In addition the Partnership felt that if a proposal was to come forward/be progressed with Kimberley Developments and the Co-op, it be presented to a joint meeting involving the Borough and Town Councils and the Partnership, rather than separate meetings. It was strongly felt that a shared approach was essential to the success of any development.

Discussions have since progressed with Kimberley Developments and they are now at a point at which they are seeking to submit a planning application but require contractual certainty from the Council to progress further.

11.2 Planning position

11.2.1 In March 2009 at a meeting between the Alsager Town Council, Alsager Partnership and representatives of the Borough Council to discuss design proposals provided by Kimberley Developments the following were agreed as the retail aspirations for Alsager:

1. Good Design
2. Development which Preserves Character
3. A Vibrant Town Centre / Range of Services
4. Development which Improves Footfall
5. Car Parking Provision
6. Only 1 Supermarket

Following considerable discussion with Kimberley Developments the design proposals shown on Plan Appendix A are now considered to satisfy all of the above aspirations.

The area of land being offered located off Lawton Road creates the opportunity to provide a secondary route of access/egress into the car park which has been welcomed by both the Alsager Partnership and Alsager Town Council.

The Alsager Town Centre Strategy SPD has recently been subject to public consultation. This finished on 2nd October 2009 and the comments received are now being considered. The planning officers will then respond to these comments and amend the Draft SPD as appropriate before putting the SPD

through the necessary Council procedures and adopting the document. It is anticipated that the document should be adopted in the new year.

11.3 Service provision

11.3.1 In the development of the design proposals detailed in Plan Appendix A, Service Managers in relation to public car parking, market and play area/public open space provision have been involved in the consultations and it is considered that the proposals satisfy service requirements and enhance the existing facilities.

In summary the proposal provides for a redesign of the existing parking layout and provides a small net increase in the number of existing car parking spaces. The car park will be retained within the ownership and management of the Council.

The proposal also allocates a specific area for the weekly market provision plus a new storage building to accommodate the market stalls.

A relocated area of public open space is provided together with a new equipped children's play area.

11.4 Consultation

Both the Alsager Town Council and the Alsager Partnership have been consulted on the design proposals detailed in Plan Appendix A.

The Town Council are supportive of the proposals subject to some observations on elements of the scheme design. The Town Council have stated a desire that the relocated area of public open space and new play area should be retained in their current use through Legal Agreement and only disposed of in the future with the consent of the relevant parties. They have also reiterated a previously stated desire that any financial sum gained from the development should be used towards the refurbishment/development of Civic Centre. Discussions are shortly to commence with the Town Council regarding future management and transfer options for the Civic Hall. At this point greater focus will be required on the financial issues/incentives related to the future management and potential transfer of the Civic Hall.

The Alsager Partnership have stated that they are supportive of the Town Councils response and with the further proviso that if introduced, parking charges be kept in abeyance until the proposed scheme is completed and the new car parking layout completed.

The Ward Members for Alsager have all been consulted on the proposals.

11.5 Valuation

11.5.1 To date no discussions have commenced regarding valuation.

The current market for retail development continues to be strong in good locations and thus it is considered that there is no reason to defer the sale of the land as a consequence of market conditions.

Despite the fact that the Co-operative Society are perceived to be a 'special purchaser' the Valuer undertaking the negotiations will need to satisfy the Council that any value achieved is the best reasonably achievable and will need to make comment on the use of clawback and overage provisions where appropriate.

12.0 Overview of Year One and Term One Issues

12.1 None

13.0 Access to Information

13.1 The background papers relating to this report may be capable of being inspected by contacting the report writer.:

Name: Peter Hall

Designation: Head of Property Services

Tel No: 01270 686133

Email: peter.hall@cheshireeast.gov.uk

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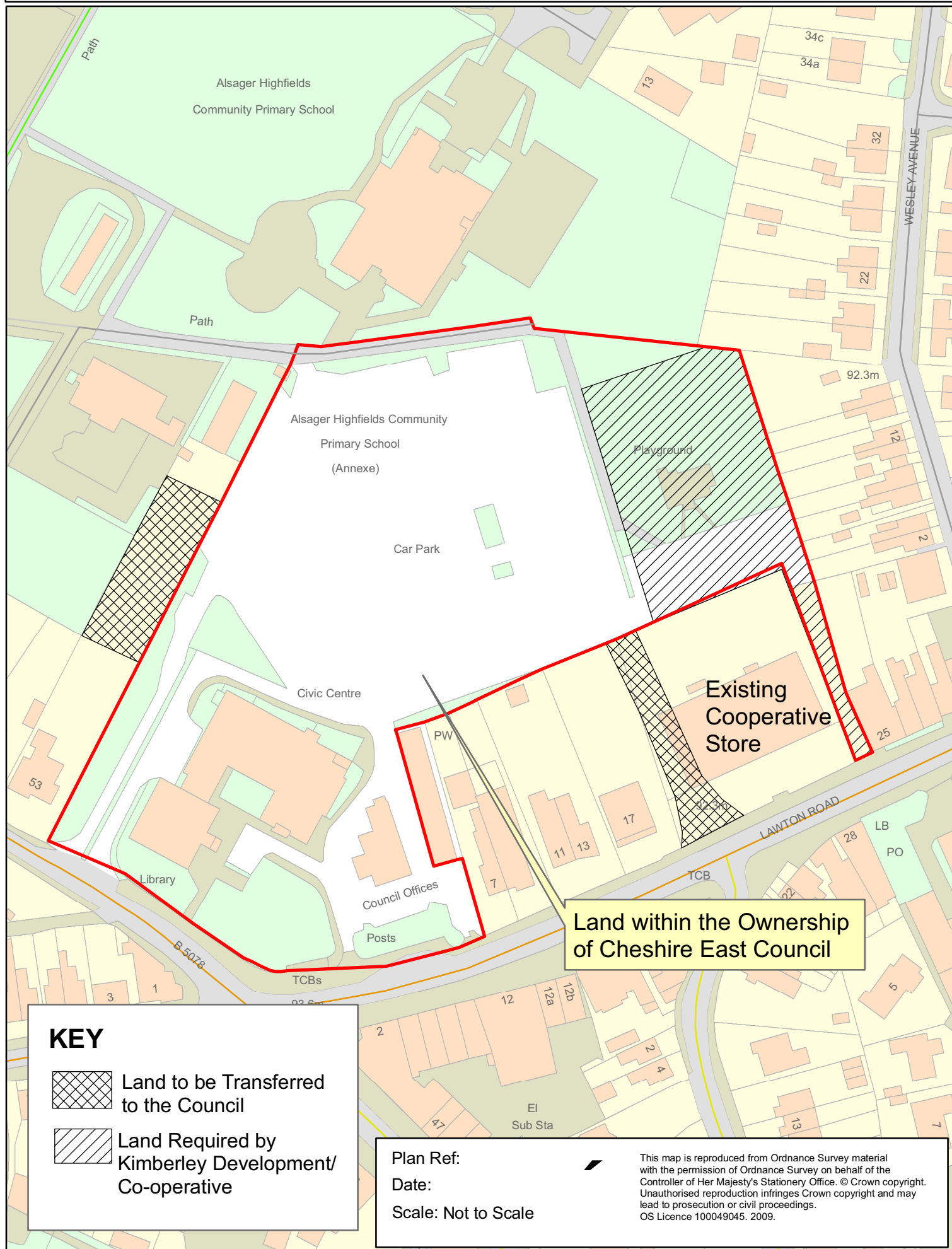


Date: Dec 2009 Scale: 1:500 @ A1
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PROPOSED SITE PLAN

PROPOSED CO-OP FOODSTORE, ALSAGER
 For Kimberley Developments plc

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