

CHESHIRE EAST COUNCIL

Cabinet Member for Procurement, Assets and Shared Services

Date of Meeting:	17 th January 2011
Joint Report of:	Assets Manager and Strategic Director (Places)
Subject/Title:	Appropriation of Land for Highway Purposes - Lyceum Square, Crewe
Portfolio Holder:	Councillor Peter Mason

1.0 Report Summary

- 1.1 To seek approval of the appropriation of Council land from public car park/market to highway and for that land to be dedicated as publicly maintainable highway.

2.0 Recommendation

- 2.1 In accordance with Section 122 of the Local Government Act 1972, to declare that the land shown coloured pink on the plan at Appendix A is no longer required for its present purposes, to give public notice of Cheshire East Borough Council's intention to appropriate the said land to highway purposes, and in the event of no objections being received within the date specified in the public notice (or if received they are withdrawn), upon the day immediately following the date specified in the public notice to appropriate the said land to highway purposes and the said land shall be publicly maintainable highway.

3.0 Reasons for Recommendations

- 3.1 The decision is being sought because of the redevelopment of Lyceum Square, Crewe. The design of the square has produced a slightly revised highway layout and thus the appropriation of Council land to highway purposes is required.

4.0 Wards Affected

- 4.1 Crewe East

5.0 Local Ward Members

- 5.1 Cllr Steve Conquest, Cllr Margaret Martin & Cllr Chris Thorley.

**6.0 Policy Implications including - Climate change
- Health**

6.1 None

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

7.1 None.

8.0 Financial Implications 2010/11 and beyond (Authorised by the Borough Treasurer)

8.1 Any land in the ownership of the Council is an asset and the Council is obligated to protect its assets and achieve best value in any transactions or dealings affecting such land.

8.2 The land to be appropriated has been valued at £15,750. Whilst the land valuation could represent a financial loss to the Council in its private landowning capacity, there is a gain to the Council as highway authority through an improved layout for Lyceum Square, and to the Council generally, by making the Square more attractive to pedestrians and shoppers. Approximately 10 car parking spaces will be removed from Lyceum Square at an approximate loss of £5,000 per year. The redevelopment is being delivered with £1.1M European funding. This is considered to be sufficient consideration to recompense the Council for the 'loss' as private landowner.

9.0 Legal Implications (Authorised by the Borough Solicitor)

9.1 Local authorities are authorised under Section 122 of the Local Government Act 1972 to appropriate land to any purpose for which they are authorised to acquire land by agreement and which is no longer required for the purpose for which it was used immediately prior to the appropriation. It should be noted that appropriation under s122 remains subject to the rights of other persons in, over, or in respect of the land concerned, therefore, any decision will not extinguish any third party rights over the land in question.

9.2 Case law has confirmed that the decision about whether land is no longer required for a particular purpose is one for the local authority acting in good faith, however, if the land is open space (as referred to in 9.5 below) the Council is required by Section 122(2A) to consider any objections to the Council's view on the question of whether the land is required for its present purposes and not just the issue of whether the land not required should be appropriated to a new purpose. If any objections are received (and not withdrawn), then the matter will be returned to the decision maker for consideration of those objections. It is acceptable to make a decision regarding the intention to appropriate in the absence of objections, but this should not be treated as foreclosing any further consideration of the matter if objections are received.

- 9.3 An appropriation from public car park/market to highway purposes, namely publicly maintainable highway, means that once it becomes highway it remains as highway until it is stopped-up (highway status removed) on the order of the magistrates' court or the Secretary of State.
- 9.4 When dedicating land the legal title remains with the landowner, but the surface becomes highway and therefore it carries a different status to private land. Consequently, the Council remains the landowner but its ability to use the land is restricted (in its landowning capacity) and the public are granted the right to pass and repass over the land. Thus, rather than the public being permitted by the Council to enter and use the land, they can use it as of right and the highway authority are under a duty to protect and maintain the highway.
- 9.5 As mentioned above, prior to any appropriation, if the land in question is open space, sub-section 122(2A) requires the Council to provide public notice of its intention to appropriate the land in a local newspaper for two consecutive weeks. Thus, it is necessary to examine whether the land is considered to be 'open space'. The definition of 'open space' within the legislation, and as expanded upon by the decisions of the courts, covers any form of recreational activity whether officially permitted or not. Whilst it is not clear that this land has had any recreational use, it has held weekly markets and associated uses on certain days. It is also possible that it has been used by the public unofficially at other times. Thus, it is considered advisable to give public notice of the intention to appropriate.
- 9.6 A further legislative requirement which may be relevant is Section 123 of the Local Government Act 1972, which states that a local authority is entitled to dispose of land held by it, however, without the consent of the Secretary of State, it cannot dispose of land for a consideration less than the best that can reasonably be obtained. There is no definition of what constitutes a 'disposal', and it is not clear whether highway dedication would actually amount to a 'disposal' for the purposes of this Section. It is unlikely that it would, but in the event that it does, what constitutes the best consideration would need to be addressed as a part of the decision. Nevertheless, in the event that the appropriation and dedication is not considered to be a 'disposal', the Council has a general fiduciary duty to protect its assets and obtain best value. It is for that reason that the land value is also being addressed in this Report. 'Consideration' is confined to those elements in the transaction which are of commercial or monetary value.
- 9.7 A further point to be considered is the requirement in section 123(2A) of the Local Government Act 1972 that a council may not dispose of any land consisting or forming part of an open space unless before disposing of it, they advertise of their intention to do so in a newspaper. This is a similar requirement to that stated in Section 122(2A) as mentioned above. Thus, whilst again there is a query as to whether this would amount to a 'disposal' for the purposes of Section 123(2A), the Council will be meeting this requirement in any event by giving public notice under Section 122(2A).

- 9.8 It should be noted that any decision to appropriate, as with any decision by the Council, is subject to a claim for judicial review which would have to be made promptly and in any event within 3 months.

10.0 Risk Management

- 10.1 If the land is not appropriated to highways purposes, the designed road would remain partially public highway and partially private land (in the ownership of the Council). This makes it more difficult to achieve traffic regulation on Heath Road.

11.0 Background and Options

- 11.1 On 30 March 2009 the former Crewe and Nantwich Borough Council granted planning permission for the redevelopment of Lyceum Square, Crewe. The redevelopment has created a vibrant, state-of-the-art pedestrian space for Crewe town centre, and is home to an iconic café and spacious, modern public lavatories. The square has been repaved in high quality, granite materials creating a robust, flexible space for parking, market use and events. It also features granite seating areas; new bins; cycle stands and modern lighting. The new layout is considered to be a significant improvement upon the previous one. The £1.7M project is being carried out with £1.1M funding from the North West Development Agency (NWDA), with the Borough Council providing the remainder.
- 11.2 Appropriation of land to highway purposes is a necessary part of the redevelopment and ideally it would have been undertaken earlier in the process thus, this Report seeks a decision so that the necessary procedures are now taken account of and dealt with. The land to be appropriated is shown coloured pink on the plan attached at Appendix A. These areas of land are no longer required for their present purpose as all traders have been accommodated on the redeveloped square in conjunction with existing facilities. The land to be appropriated to highway will enable unobstructed vehicular access through the area (subject to any relevant traffic regulation restrictions).
- 11.3 These two areas of Council land have been valued by the Assets Manager as having a total value of £15,750. Given this valuation and in the event it is considered to be a 'disposal', it is necessary for the Council to consider the best consideration that can reasonably be obtained. In this particular case, the Council is considered to be benefitting by the improvements proposed to Lyceum Square and the added benefits it will bring commercially to the town centre, making it more attractive to shoppers and visitors and enhancing the town centre. The Council received £1.1M NWDA funding to deliver the redevelopment, without which the redevelopment would not have been delivered. Thus, it is considered that the monetary and commercial benefits to the Town Centre of the redevelopment far exceed the 'loss' to the Council, and thus, if the appropriation is subsequently claimed to be a 'disposal', it is considered to be the best consideration that can reasonably be obtained.

- 11.4 Options: The Council could refuse to appropriate its land to highway purposes, which would mean that it would be more difficult to deliver the traffic regulation order in respect of Heath Street.
- 11.5 In summary, the improvements to the whole Square, together with the NWDA funding to achieve the delivery, are considered to provide benefits to the Council in excess of the 'loss' to the Council as private landowner.
- 11.6 It is recommended, therefore, that the decision maker agrees to the giving of public notice of the intended appropriation of the land from parking/market to highway and that the land will become publicly maintainable highway. In the event that no objections are received by the date stated in the notice as being the closing date for objections, (or where received, they are withdrawn), the land will be appropriated. If objections are received, the matter will return to the decision maker for consideration of those objections and a decision made whether to appropriate or not in light of those objections.

12.0 Overview of Year One and Term One Issues

12.1 None

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer.

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