

## CHESHIRE EAST COUNCIL

### REPORT TO PORTFOLIO HOLDERS – FINANCE & SERVICE COMMISSIONING

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**Report of:** Property Services Manager

**Subject/Title:** Public Open Space Land adjacent to Belong Village, Kennedy Avenue, Macclesfield – Disposal by way of Freehold / Leasehold

**Date of Meeting:** 21 November 2014

**Portfolio Holders:** Councillors Peter Raynes & Councillor Topping

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#### 1.0 Report Summary

- 1.1 The purpose of this report is to declare the land adjacent to Belong Village, Kennedy Avenue, Macclesfield (as shown on the attached plan outlined in red) surplus to operational requirements.
- 1.2 Subject to 1.1 being approved, there is also a requirement to gain the necessary authority to provide consent to enter into negotiations with Belong to dispose of the land by way of a leasehold or freehold on terms and conditions to be determined following a request by Belong to construct a car park on open space land adjacent Belong owned property (as shown edged blue on the attached plan).

#### 2.0 Decision Requested

- 2.1 To declare the land adjacent to Belong Village, Kennedy Avenue, Macclesfield, surplus to operational requirements.
- 2.2 To grant Authority to enter into negotiations with Belong to dispose of the land by way of a leasehold or Freehold on terms and conditions to be determined by the Property Services Manager and Borough Solicitor.

#### 3.0 Reasons for Recommendations

- 3.1 The land the subject of this report is owned by Cheshire East Council (“CEC”) and currently identified in the Macclesfield Local Plan proposals map as Existing Open Space and is therefore subject to policy RT1 which states that areas of open space as shown on the proposals map will be protected from development.
- 3.2 The land is also identified within the CEC Open Space Assessment [OSA] as Open Space. The OSA forms part of the background evidence and inform the emerging local plan and have been used in the formation of the Green Space Strategy [GSS].
- 3.3 Local Ward Members have been approached daily by local residents for some time over parking issues around Belong Care Home (a privately owned ‘Care Village’ BCH) on Kennedy Avenue, Macclesfield around and between its junctions with Millbank Drive and Brampton Avenue. It is reported that these issues are caused by staff, visitors and delivery vehicles connected to Belong Macclesfield.
- 3.4 The parking on Kennedy Avenue has been identified as a nuisance to residents with inconsiderate parking also obstructing their driveways. Therefore Belong Care Home has approached the Council to facilitate a car park on the land adjacent to their existing property which is in the ownership of CEC. This

additional car parking is likely to resolve the parking issues along Kennedy Avenue.

- 3.5 The Client Service (Environment) has confirmed that the land is not surplus to operational requirements. However, the need for a car park to prevent the ongoing parking issue in this area and to improve the quality of life to the local residents by relieving an unused or under-utilised area of public open space is required.

#### **4.0 Wards Affected**

- 4.1 Broken Cross and Upton

#### **5.0 Local Ward Members**

- 5.1 Cllr Louise Brown  
Cllr Martin Hardy

#### **6.0 Policy Implications including - Carbon reduction - Health**

- 6.1 The land the subject of this report is owned by Cheshire East Council ("CEC") and currently identified in the Macclesfield Local Plan proposals map as Existing Open Space and is therefore subject to policy RT1 which states that areas of open space as shown on the proposals map will be protected from development.

- 6.2 The land is also identified within the CEC Open Space Assessment [OSA] as Open Space. The OSA forms part of the background evidence and inform the emerging local plan and have been used in the formation of the Green Space Strategy [GSS]. Open space is provided for the benefit of the whole community.

#### **7.0 Financial Implications**

- 7.1 Cheshire East Council will be likely to receive a capital receipt if the land is sold or a rental income if the land is disposed by way of leasehold.
- 7.2 In granting a lease, the Council will retain the asset value of the land in question.

#### **8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 In accordance with section 123 of the Local Government Act 1972 the Council is under an obligation to obtain the best consideration reasonably obtainable upon the disposal of its property.
- 8.2 A Local Authority is able to dispose of land and buildings at less than the best consideration reasonably obtainable under the General Disposal Consent (England) 2003, if the difference between the unrestricted value of the land (i.e. the best price reasonably obtainable on terms that are intended to maximise the consideration) and the consideration for the disposal does not exceed £2 million and where the purpose for which the land is being disposed of is likely to contribute towards the achievement of the promotion or improvement of one or more of the following; economic well-being, social well-being and/or environmental well-being in respect of the whole or any part of its area or of all

or any persons resident or present in its area and all other conditions and requirements of the Consent are satisfied. If a proposed disposal does not fall within the terms of the Consent a Local Authority must apply for the Specific Consent to dispose of the Secretary of State.

- 8.3 In transferring assets the Council must behave properly to fulfil its fiduciary duty.
- 8.4 In accordance with Section 123 (2A) of the Local Government Act 1972 the Council is legally obliged to publish notice of its intention to dispose of open space for two consecutive weeks in a newspaper circulating in the area in which the open space is situated. In this context the Council will have to advertise the proposed disposal of the Open Space. As well as a requirement to advertise Section 123 (2A) provides that a principal council may not dispose of open space unless, before disposing of the open space consideration is given to the objections/representations made. The Council will consider any objections and/or representations to the proposed disposal made to it. As such this decision to dispose is subject to the land being advertised and any decision will be reconsidered in view of any objections/representations received.
- 8.5 The land may be sold to a named party in accordance with the Cheshire East Council's policy, where the land to be disposed of can be sold to an adjoining landowner if best consideration is to be obtained.

## **9.0 Risk Management**

- 9.1 There are no perceived risk management issues

## **10.0 Background**

- 10.1 Cheshire East Planning department have stated that the site is protected open space (POS) and it is an important site linking with other open space in the area. Green space is important in this area as much of the residential development is high density. Therefore a planning application would be required for a change of use from Public Open Space to Car Parking. Therefore the proposed lease / disposal will be subject to Planning permission being granted for the proposed car park.
- 10.2 Cheshire East Councils Public Rights of Way team have confirmed that there is a public right of way that runs from Becks Lane and directly across the area in question (Macclesfield Footpath 20). The Public Rights of Way (PROW) team would need to be consulted about options in regard to the existing PROW and any proposals would need to meet the relevant tests and be subject to Public Consultation.
- 10.3 The Environment Client Service have confirmed that the loss of the existing Public Open Space (POS) would be contrary to council policy and the existing POS makes a substantial contribution to the local environment, public realm, footpath system and local community as well as residents of Belong. The land is also a pleasant green open space with no anti social behaviour issues. Any area lost to car parking would most likely be extensive and the disruption extends over the majority of the POS. However, as shown on the plan, only approximately half of the open space between the current shoppers' car park and BCH is likely to be utilised and Public Open space is available in close

vicinity at both Lanark Walk Park behind the BCH and Becks Lane Public Open space.

- 10.4 The current capacity of the Belong Care Home (BCH) on site parking is limited and therefore BCH has investigated where they may be able to provide some additional spaces on site. BCH have approached the Council to see if they can acquire / lease land adjacent to their site.
- 10.5 Staff and visitors connected to Belong Care Home are parking on Kennedy Avenue which is causing a nuisance to residents as they have problems with accessing their properties.
- 10.6 The BCH recognise the nuisance caused by the parking and in January 2014 did note that they had actively discouraged staff and visitors from parking on the highways in consideration of the complaints. Unfortunately this has not resolved the problem and cars are still being parked along Kennedy Avenue.
- 10.7 A video survey was commissioned and completed on 25 June 2014. This identified that the majority of the access to the BCH is from the direction of the Shops (Kennedy Road) with the majority of people parking at the shops car park or along Kennedy Avenue.

#### **11.0 Alternative Options**

- 11.1 To not declare the land surplus to requirements given the status of the land in the aforementioned policies and therefore do not start negotiations with regard to a disposal of land by way of a freehold / leasehold.

#### **12.0 Access to Information**

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

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