

CHESHIRE EAST COUNCIL

REPORT TO: CABINET

Date of Meeting:	1 February 2010
Report of:	Borough Treasurer and Head of Assets
Subject/Title:	Appropriation of land for car parking purposes
Portfolio Holder:	Cllr Peter Mason

1.0 Report Summary

- 1.1 The purpose of the report is to seek authority for the appropriation for car parking purposes of certain parcels of land belonging to the Council. The report provides the details of objections received to the proposed appropriation and invites Cabinet to consider these objections.

2.0 Decision Requested

- 2.1 In accordance with section 122 of the Local Government Act 1972 Cabinet is requested to consider the objections received in relation to the proposed appropriation of the land described within Appendix 1 to this report, and to determine, in the light of these objections, whether to appropriate the land for parking purposes.

3.0 Reasons for Recommendations

- 3.1 In circumstances where objections have been received in relation to the proposed appropriation of land, the Council is required to consider the objections.

4.0 Wards Affected

- 4.1 Alsager, Congleton Rural, Congleton Town East, Congleton Town West, Middlewich, Sandbach, Sandbach East and Rhode.

5.0 Local Ward Members

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| 5.1 | Alsager - | Rod Fletcher
Derek Hough
Shirley Jones |
| | Congleton Rural - | Les Gilbert
Andrew Kolker
John Wray |

Congleton Town East -	David Brown Peter Mason Andrew Thwaite
Congleton Town West -	Gordon Baxendale Roland Domleo David Topping
Middlewich -	Paul Edwards Simon McGrory Michael Parsons
Sandbach	Stella Furlong Gillian Merry Barry Moran
Sandbach East & Rhode -	Elsie Alcock Rhoda Bailey Andrew Barratt

6.0 Policy Implications including - Climate change - Health

6.1 Not applicable.

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

7.1 None

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

8.1 None

9.0 Legal Implications (Authorised by the Borough Solicitor)

9.1 Section 35 of the Road Traffic Regulation Act 1984 (the 1984 Act) allows local authorities to make provision by order for the use of any parking place provided by an authority under section 32 of the 1984 Act. Section 32(2) states that a local authority may adapt for use as a parking place any land acquired or appropriated by them for the purposes of the section, i.e for parking purposes.

9.2 Appropriation of land to any purpose is governed by Section 122 of the Local Government Act 1972 (the 1972 Act), which authorises councils 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 held immediately prior to the appropriation.

- 9.3 It should be noted that the appropriation of land by a council by virtue of sub-section 122(1) of the 1972 Act remains subject to the rights of other persons in, over, or in respect of the land concerned. Therefore a decision to appropriate land for a particular purpose does not extinguish any third party rights over the land in question.
- 9.4 Sub-section 122(2A) of the 1972 Act provides that a council may not appropriate any land consisting of or forming a part of open space without first providing public notice for two consecutive weeks in a local newspaper and thereafter considering any objections received. Taking into consideration the wide definition of 'open space' within relevant case law, it is felt that the land in question may be viewed as open space for the purposes of section 122, and for this reason notice under sub-section 122(2A) has been published.
- 9.5 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 the Council is required by sub-section 122(2A) to consider objections to the Council's view on the question of whether the land is required for present purposes and not just the issue whether land not so required should be appropriated to a new purpose.

10.0 Risk Management

- 10.1 Full consideration of the objections received will mitigate any risk of challenge to the decision of Cabinet.

11.0 Background and Options

- 11.1 On 10th November 2009 Cabinet resolved to make an off-street parking places order in relation to prescribed car parks within the Congleton area, subject to a requirement that the necessary statutory public notice of the intention to appropriate the land to car parking purposes be published.
- 11.2 Notices of the Council's intention to appropriate the land described in the Appendix 1 to this report were published in local newspapers circulating in the area during the weeks commencing 14th and 21st December 2009.
- 11.3 As set out within the legal implications at paragraph 9 above, the Council is authorised by section 122 of the 1972 Act to appropriate land to any purpose for which it is authorised to acquire land by agreement and which is no longer required for the purpose for which it was held immediately prior to the appropriation. Whilst, as indicated within the table at Appendix 2, each parcel of land has been used as a car park for a number of years, the Council does not have evidence to indicate that all of the land in question is currently held for car parking purposes. The purposes for which the Council originally acquired the land are set out within Appendix 2.
- 11.4 The Council has received thirteen objections in relation to the proposed appropriation of the land. Copies of the objections are reproduced within Appendix 3 to the report.

- 11.5 A number of the objections are based on a perception that the notice of the proposed appropriation of the land relates directly to a decision to introduce charges on the car parks. For the purpose of confirmation, the decision to appropriate the land does not override the need for any decision in relation to the introduction of charges to be subject to a separate consultation exercise in accordance with the provisions of the Road Traffic Regulation Act 1984 and the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996. The decision to appropriate the land relates purely to a decision about the purposes for which the Council holds the land, and, contrary to the concerns within the objections, does not of itself provide authority for the introduction of a charging regime.
- 11.6 A number of objections (including that of Middlewich Town Council) raise concerns about the appropriation of Civic Way car park in Middlewich on the basis that this site is used for “events, fairgrounds and festivals.” In addition Parking Services are aware that a market regularly takes place on Little Common car park in Sandbach. As a general point arising from these issues, it is suggested that the decision before Cabinet is to consider the purposes for which the land is currently held (as set out within Appendix 2) and to determine, firstly, whether it is required for those purposes, and secondly, whether it is required for the purposes for which it is proposed to be appropriated, i.e. for car parking. It is suggested that in considering this issue Cabinet take into account the fact that the land is currently used for car parking purposes and has been for a number of years. It is further submitted that Parking Services propose to continue to permit the events on Civic Way car park and the market on Little Common by formally closing the car park in accordance with the terms of the Order.
- 11.7 The representation from Alsager Town Council states that no objections are made to the appropriation of the land but state in relation to Fairview car park that this is conditional on “the existing covenant on this car park being resolved and that the land in question does not include the current play area.” As can be seen from the plans at Appendix 1 the land to be appropriated does not include the play area. Additionally, as set out within the legal implications at paragraph 9 of the report, the appropriation of land remains subject to the rights of other persons in, over, or in respect of the land concerned, for this reason it is suggested that the existence of third party rights over land would not prevent a decision to appropriate the land.
- 11.8 One representation queries why the Westfields car park was not included within the notice relating to appropriation. For the purposes of confirmation, Westfields was included within the notice under the list of Sandbach car parks and does form part of the land subject to the requested decision.
- 11.9 A number of representations raise concerns about the consultation process in relation to appropriation. As set out within paragraph 9.3 above, the consultation process in relation to appropriation is dictated by section 122(2A) of the Local Government Act 1972, which has been complied with.

12.0 Overview of Year One and Term One Issues

12.1 Not applicable.

13.0 Access to Information

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

Name: Peter Hartwell

Designation: Head of Safer & Stronger Communities

Tel No: 01270 529614

Email: peter.hartwell@cheshireeast.gov.uk

Appendix 1 – Schedule of land (together with plans)

Appendix 2 – Schedule of purposes for which the land was originally acquired

Appendix 3 – Copies of objections to proposed appropriation

SCHEDULE OF LAND
(as shown on plans attached)

SANDBACH CAR PARKS

Little Common, Hawk Street, Well Bank, Crown Bank, Westfields

CONGLETON CAR PARKS

Antrobus Street, Princess Street, Fairground, Roe Street, Back Park Street, Chapel Street, West Street, Park Street, Blake Street, Egerton Street, Rood Hill, Royle Street, Thomas Street

ALSAGER CAR PARKS

Fairview, Fanny's Croft, Station Road, Well Lane

MIDDLEWICH CAR PARKS

Seabank, Civic Way, Southway

HOLMES CHAPEL CAR PARKS

Parkway, London Road

APPENDIX 2

SCHEDULE – PURPOSES FOR WHICH LAND ORIGINALLY ACQUIRED

SANDBACH

Name of Parking Place	History of site	Purpose of acquisition
Little Common		Acquired in separate parcels. 27 th March 1963, 22 nd January 1918 and 5 th February 1890 (purchase of Market Hall).
Hawk Street	Used as a car park prior to 1979 (possibly prior to 1974)	Hawk St CPO 1960, confirmed 17 th May 1961. Purpose - part III of the Housing Act 1957. Acquired between 1964-1968. (Hawk St, Well Bank and Crown Bank are three separate parts of one car park).
Well Bank	As above	As above (Hawk St, Well Bank and Crown Bank are three separate parts of one car park).
Crown Bank	As above	None (not owned by Council) (Hawk St, Well Bank and Crown Bank are three separate parts of one car park).
Westfields	Planning permission for car park spaces granted in January 1980	Purpose not specified.

CONGLETON

Name of Parking Place	History of site	Purpose of acquisition
Antrobus Street	First used as a car park from between approx 1974 - 1979	Bought in as separate parcels of land. 1970 – garden of no. 29. 1974 – 5 & 6 Tanhouse Yard including property. 21 st January 1980 and 19 th January 1979 – purpose LGA 1972 s120. 1979 – covenants for use as a public car park.

Princess Street	Used as a car park from 1990.	125 year lease, 1 st June 1990. Purpose within lease, use as a public car park.
Fairground		Acquired 8 th October 1906, purpose, powers conferred by Public Health Act.
Roe Street		1971 – 5 & 9 Spring St, assignment of 999 yr lease. 1982 – 1 – 5 (inc) Timber yard and workshop, Moor St. Assignment 999 yr lease. Purpose s112 & 119 Town and Country Planning Act 1971. 1971 – 1 – 3 Spring St, assignment. 1968 – 7 Spring St, assignment. 1974 – 20 Bromley Rd, assignment. 1981 – 16 Bromley Rd (freehold) supplemental to Bromley Rd no.s 5 & 6 Clearance Area, CPO 1978 (made 9 th Feb 1978) Part III Housing Act 1957. Restriction on disposition in accordance with HA 1957. 1982 – 18 Bromley Rd, restriction on disposition LGA.
Back Park Street	Used as a car park from early 1980's (associated with construction of Mountbatten Way)	1963 – 29-37 (freehold) Back Park St, supplemental to Back Park St (no.2) CPO 1961, made 30 th Jan 1961, HA 1957 for purposes of part III, confirmed 30 th March 1962. 1963 – 29 Back Park St, assignment of lease, purpose as above. 1963 – 31 Back Park St, assignment of lease, purpose as above. 1963 – 37 Back Park St, assignment of lease, purpose as above. 1963 – 33 Back Park St, assignment of lease, purpose as above. 1963 – 35 Back Park St, assignment of lease, purpose as above. 1964 – 13 Back Park St (freehold) purpose as above. 1964 - 11 Back Park St, freehold and assignment of lease, purpose as above. 1964 – 15 Back Park St freehold and assignment, purpose as above. 1963 – plot of land (freehold and leasehold), purpose as above. 1964 – 1 Back Park Street, purpose as above. 1975 – 3 Back Park Street (freehold and leasehold), purpose as above. 1975 – 17 – 27 Back Park St (freehold and leasehold), purpose as above. 1963 – 7 Back Park St (assignment of lease), purpose as above. 1965 – 9 Back Park St (assignment of lease) purpose as above.
Chapel Street		1971 – 11 & 13 Chapel St, Chapel St no. 1 CA, CPO 1967 Part III HA 1957, confirmed 8 th May 1968. 1971 – 9 Chapel St (as above) 2002 – possessory title, part of car park. 1981 – 999 yr lease, for use as a public car park. 1982 – Land to the rear of 26 High St. 1982 – land on n/w side of Chapel St, possessory title, restriction on disposition LGA 1972. 1981 – 2 plots of land, purpose s120 LGA 1972.
West Street		Acquired in separate parcels. 1971 – 31 Wagg St, CPO 1969, Congleton Lion St no.2 CA. Part III HA 1957, confirmed 30 th April

		<p>1970. 1975 – 29 Wagg St. 1970 – 11 Lion St (as above) 1973 – 7 Lion St (as above) 1972 – 9 Lion St (as above) 1967 (Conveyance main area of car park) grants rights of way over intended car park. 1967 – land to the rear of 36-42 West St. 1969 – 36 West St. 1967 – 38 West St. 1969 – garage to rear of 38 West St and common rear passage.</p>
Park Street	Used as a car park prior to CBC purchase, from approx early 1980's.	Marked out as a car park when purchased from CCC on 28 th January 2002.
Blake Street	Used as a car park approx 1974 (prior to CBC purchase).	<p>Conveyance 4th June 1981. Use limited to use for a <u>free</u> public car park.</p>
Egerton Street	Used as a car park approx 1974, after CPO/CA acquisitions.	<p>CPO, Blake St CPO 1961 for the purposes of part III of the Housing Act 1957. 14th May 1963. 8 & 10 Blake St acquired 1971.</p>
Rood Hill	Planning permission granted for formation of car park in July 1996.	<p>Acquired 19th February 1998. No confirmation of purpose/use.</p>
Royle Street	Used as a car park approx 1974, after CPO/CA.	<p>Clearance Area and CPO 1970. Part III of the Housing Act 1957. No. 33 purchased by agreement 1968. No. 21 purchased 1972 No.s 23,27, 29 & 31 purchased 1972 (supplemental to CA) 3, 5, 7, 9, 11, 13 & 14 purchased 1973 (supplemental to CA)</p>
Thomas Street	Used as a car park approx 1974, refurbished in 1990's.	<p>Assignment of a 999 year lease. Bought in as houses. Stopping up Order effecting entrance to car park dated 16th September 1986.</p> <p><u>Thomas St</u> No. 9 - 1970 No. 15 – 1969 No. 17 – 1969 No. 21 – 1975 for the purpose of the Highways Act 1959. No. 23 – 1968. Supplemental to no. 3 Clearance Area: - No. 31 & 35 – 1970 No.s 27-35 Assignment subject to above CPO – 1970 No.s 11 & 13 – 1979 – restriction, dispositions in accordance with Housing Acts 1957 – 1969. No.s 19 & 25 – assignments supp to Thomas St CPO 1970, Restriction on dispositions in accordance with LGA 1972.</p>

		<p>No. 7 – 1981. Restriction on disposition Housing Act 1957 No.s 1, 3 & 5 (part of 9 Brook St) – 1984.</p> <p><u>Brook St</u> No. 1 – 1973 No. 3 – 1972 No. 7 – 1975 for the purpose of Part V of the Housing Act 1957 No.s 11 & 11A – 1980 (assignment) No.s 11, 13 & 15 – 1980</p> <p><u>Willow St</u> No. 53 – 1973, assignment No. 55 – 1977, purpose Part V, Housing Act 1957 No. 57 – 1975 (purpose as above) No. 51 – 1976 (purpose as above) No. 61 – 1972, assignment No. 49 – 1974, Thomas St CA, CPO 1967. Purpose Part III Housing Act 1957. No. 69 – 1979. Restriction on dispositions in accordance with LGA 1972. No. 65 – 1984. Restriction on dispositions in accordance with Town and Country Planning Act 1971. No. 67 – 1982. Restriction on dispositions LGA 1972. No. 63 – 1982. Restriction on dispositions LGA 1972. No. 59 – 1981. Restriction on dispositions LGA 1972.</p>
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ALSAGER

Name of Parking Place	History of site	Purpose of acquisition
Fairview	Planning permission for an extension to the then existing car park granted in July 1990	Acquisition dated 14 th November 1922 - pursuant to s175 Public Health Act 1875.
Fanny's Croft	Planning permission for car parking spaces granted in December 1978	Restriction on dispositions LGA 1972.
Station Road	Permission for change of use to car park granted in September 1986.	No purpose noted on acquisition docs.
Well Lane		No purpose noted on acquisition docs.

MIDDLEWICH

Name of Parking Place	History of site	Purpose of acquisition
Seabank	Used as a car park approx 1974, after CPO/CA.	Acquired in separate parts. 30 th December 1915 for the purpose of s154 of the Public Health Act 1875 or any other purpose for which the Council are authorised to acquire land. 30 th May 1933 for the purpose of widening and improving Kinderton Street, Middlewich. Covenant to keep and maintain land as open space and parking ground. 2 nd October 1931 (houses and premises) 6 & 8 Seabank, acquired for the purpose of open space or parking ground or any of the purposes in the Public Health Act 1875. 2 nd October 1931 (house and premises) 4 Seabank, purpose as above. 14 th September 1974 – 14 Seabank (house), no purpose in Conveyance. 26 th April 1973 – 16 Seabank (house), no purpose in conveyance. 7 th January 1972 – 12 Seabank (house), no purpose in Conveyance. 6 th December 1972 – 10 Seabank (house), no purpose in Conveyance.
Civic Way	Used as a car park since at least 1974	Acquired 4 th May 1892, for the purposes of several Acts e.g. The Public Health Act 1875, The Public Libraries (England) Acts 1855 to 1890, the Gymnasiums and Museums Act 1891, the Baths and Washhouses Act 1846 and others.
Southway	Used as a car park since at least 1984	Main part of car park acquired for the purpose of the Public Health Act 1925, covenant 1961 to use as a public car park.

HOLMES CHAPEL

Name of Parking Place	History of site	Evidence of acquisition/appropriation
Parkway	Planning permission for car park granted October 2001.	Acquired 5 th November 2007. No purpose specified in the Transfer, however, land acquired pursuant to a s106 Agreement, for use as a car park.
London Road		Acquired 17 th September 2003 from CCC. Covenant on the title to use the land as a public car park only.