

Cabinet Member for Regeneration and Assets Agenda

Date: Monday, 13th July, 2015
Time: 11.00 am
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the body in question. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

4. **Transfer of Broken Cross Pavilion (Jasmine Park), Macclesfield (Pages 1 - 8)**

To consider the transfer of this land and buildings.

5. **Sale of Land at Newall Avenue, Sandbach (Pages 9 - 14)**

To consider the sale of this land.

For requests for further information

Contact: Cherry Foreman

Tel: 01270 686460

E-Mail: cherry.foreman@cheshireeast.gov.uk with any apologies

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CHESHIRE EAST COUNCIL**REPORT TO PORTFOLIO HOLDER – REGENERATION AND ASSETS**

Report of: Executive Director of Economic Growth and Prosperity
Subject/Title: Transfer of Broken Cross Pavilion (Jasmine Park), Macclesfield
Date of Meeting: 13 July 15
Portfolio Holder: Cllr Don Stockton

1.0 Report Summary

1.1 The purpose of this report is:-

- 1.1.1 to provide consent to the freehold transfer of land and buildings known as Broken Cross Pavilion (Jasmin Park), Macclesfield, edged red on the plan attached to the Council from Taylor Wimpey Plc under the terms of a Section 106 agreement dated 24th February 2006 and subsequent variation dated 2nd December 2011 between Taylor Wimpey Plc and Cheshire East Council and
- 1.1.2 to simultaneously grant a 125 year lease, at less than best consideration, to Jasmine Park Community and Sports Centre Limited or such other named Charity or organisation as may be created and submits admissible business plan to take over the management of the pavilion and associated grounds as edged red on the attached plan. The Council will retain land and responsibility of the play areas and walkways shaded blue on the plan attached.

2.0 Decision Requested

2.1 It is recommended:

- 2.1.1 THAT the property known as the Broken Cross Pavilion (Jasmin Park), Macclesfield and surrounding land as shown edged red on the attached plan is transferred freehold from Taylor Wimpey Plc under the terms of a Section 106 agreement dated 24th February 2006 and subsequent variation dated 2nd December 2011 between Taylor Wimpey Plc and Cheshire East Council to Cheshire East Council.
- 2.1.2 A 125 year lease of the area edged red on the attached plan is granted 'back to back' to Jasmine Park Community and Sports Centre Limited or an approved charity via a community asset transfer. The lease will be subject to the obligations held in the section 106 agreement, and also that the company will transfer to charitable status within 6 months of the transfer. The tenant will also take the benefit of 65% of the £120,000 or such sum once indexed as a commuted sum for maintenance. The Council will retain land and responsibility of the play areas and walkways

shaded blue on the plan attached. The 125 lease will be subject to (a) a 25 year break option in favour of the tenant and (b) in the event the charity ceases to exist the lease will determine and the demise will revert back to the Council at nil consideration.

3.0 Reasons for Recommendations

- 3.1 The S106 agreement requires the site shown edged red on the attached plan be transferred from Taylor Wimpey Plc to the Council. The conditions of the S106 agreement are now met and a completion certificate was issued on 2nd April 2015.
- 3.2 The Section 106 agreement includes provision of a maintenance sum which is triggered on transfer to be utilised by the Council for the ongoing repair and maintenance of the open space and Pavilion (including Car Park and Pitches) for such period as the contribution covers. The maintenance sum is specified within the S106 as being £120,000 which will be subject to Indexation; this figure is split as 35% for open space and 65% for the pavilion building.
- 3.3 Jasmine Park Community and Sports Centre Limited have requested that the asset is transferred to them under a Community Asset transfer by way of a long lease. The lease will include restrictions which will covenant Jasmine Park Community and Sports Centre Limited to adhere to the specific details of the S106 agreement. Furthermore there will be obligations to adhere to Safeguarding Policies, Health and Safety Policies, Volunteer Policies and any other statutory Policies which the Landlord deems necessary to run the facility.
- 3.4 Jasmine Park Community and Sports Centre are currently established as a Limited Company. There will be a requirement to restructure this company to a model, e.g. charitable status which will best fit the needs to the community and a business plan approved by the Executive Director for Economic Growth and Prosperity prior to completing the lease.

4.0 Wards Affected

- 4.1 Broken Cross and Upton

5.0 Local Ward Members

- 5.1 Councillor Liz Durham
Councillor Martin Hardy

6.0 Policy Implications including - Carbon reduction - Health

- 6.1 Cheshire East Council has published policies in relation to the provision of public open space and looks to secure facilities for all our communities to agreed standards.

- 6.2 Cheshire East Council's "Ambition for All - Sustainable Community Strategy (2010 – 2025)", states; Cheshire East is a prosperous place where all people can achieve their potential, regardless of where they live. We have beautiful productive countryside, unique towns with individual character and a wealth of history and culture. The people of Cheshire East live active and healthy lives and can get involved in making their communities safe and sustainable places to live.
- 6.3 Local Plan Core Strategy: Cheshire East Council is currently drafting a new Local Plan. The Local Plan includes a summary of local infrastructure aspirations which include new public parks and open space facilities identified through local consultations.
- 6.4 Our Green Space Strategy (2013) considers the provision of new good quality green space and the proactive management of existing green space to conserve an important legacy for Cheshire East's communities. Our larger parks contribute significantly towards making our towns unique with individual character and their wealth of history and culture. They form a vital component of the essential infrastructure for supporting the requirements of the local and wider community. Parks will need to constantly improve to reflect changing needs as safe, clean, healthy and sustainable, places where the local community can meet, exercise and enjoy themselves, accessible places for all including the disabled and the disadvantaged.
- 6.5 The new park at Broken Cross, Macclesfield (Also known as Jasmine Park) has been secured by the Council to provide public open space and outdoor recreational facilities for this local community. It is best practice that the local community should be allowed to be fully engaged in the management and maintenance of their local parks. This decision to undertake a community asset transfer to a local community charitable trust is a mechanism to secure the community's engagement for the long term.

7.0 Financial Implications

- 7.1. This will be a community asset transfer at nil consideration. This will be at less than best consideration however under the general disposal consent, members are requested to approve the undervalue in the region of £258,800 for the land and pavilion transferring by way of lease.
- 7.2 The site will be handed over to the Council with a commuted sum for long term maintenance amounting to £120,000 (subject to indexation) of which this will be split to reflect the facilities being retained by the Council and those being leased out, payable on completion of the lease and acceptance of their business plan for running and maintaining the facilities within the demise of the lease.
- 7.3 It is proposed that the Council will retain 35% of the commuted sum and transfer the remaining 65% to the leaseholder.

- 7.4 The Council's retained areas will be supported by the retained proportion of the commuted sum and will be managed by Ansa on behalf of the Council as operational portfolio.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers; however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.
- 8.2 The General Disposal Consent 2003 authorises the disposal of land for 7 years or more at less than best consideration if the undervalue is £2million or less, if the undervalue is higher than £2million consent to the disposal is required from the Secretary of State.
- 8.3 The Council has the power to grant a lease of the land pursuant to s123 of The Local Government Act 1972 subject to any disposal for 7 years or more being at the best consideration that can reasonably be obtained.
- 8.4 Notwithstanding the above powers the Council has a fiduciary duty to the taxpayers and must fulfil this duty in a way which is accountable to local people.
- 8.4 All disposals must comply with the European Commission's State aid rules. When disposing of land at less than best consideration the Council is providing a subsidy to the occupier of the land. In such cases the Council must ensure that the nature and the amount of the subsidy complies with State aid rules, failure to comply means that the aid is unlawful and may result in the benefit being recovered with interest from the recipient. If the occupier receives less than approximately £155,000 (200,000 Euros) in state aid over a 3 year period then the De Minimis Regulation will apply (small amounts of aid are unlikely to distort competition).
- 8.5 Acquisitions are also subject to similar means of accountability to include best value being obtained. State Aid considerations may fall to be considered, and in some transactions the complexity may involve procurement legislation, and application of the contract procedure rules, for the due diligence information/material, depending on each particular set of circumstances. Here the acquisition is at nil cost by virtue of an s106 agreement being a planning obligation.

9.0 Risk Management

- 9.1 There is a risk that another community group may object to the off market transaction directly to Jasmine Park Community and Sports Centre Limited however this is considered a very low risk given there was not any other

charity or group willing to come forward to take on the site under the terms on offer.

10.0 Background

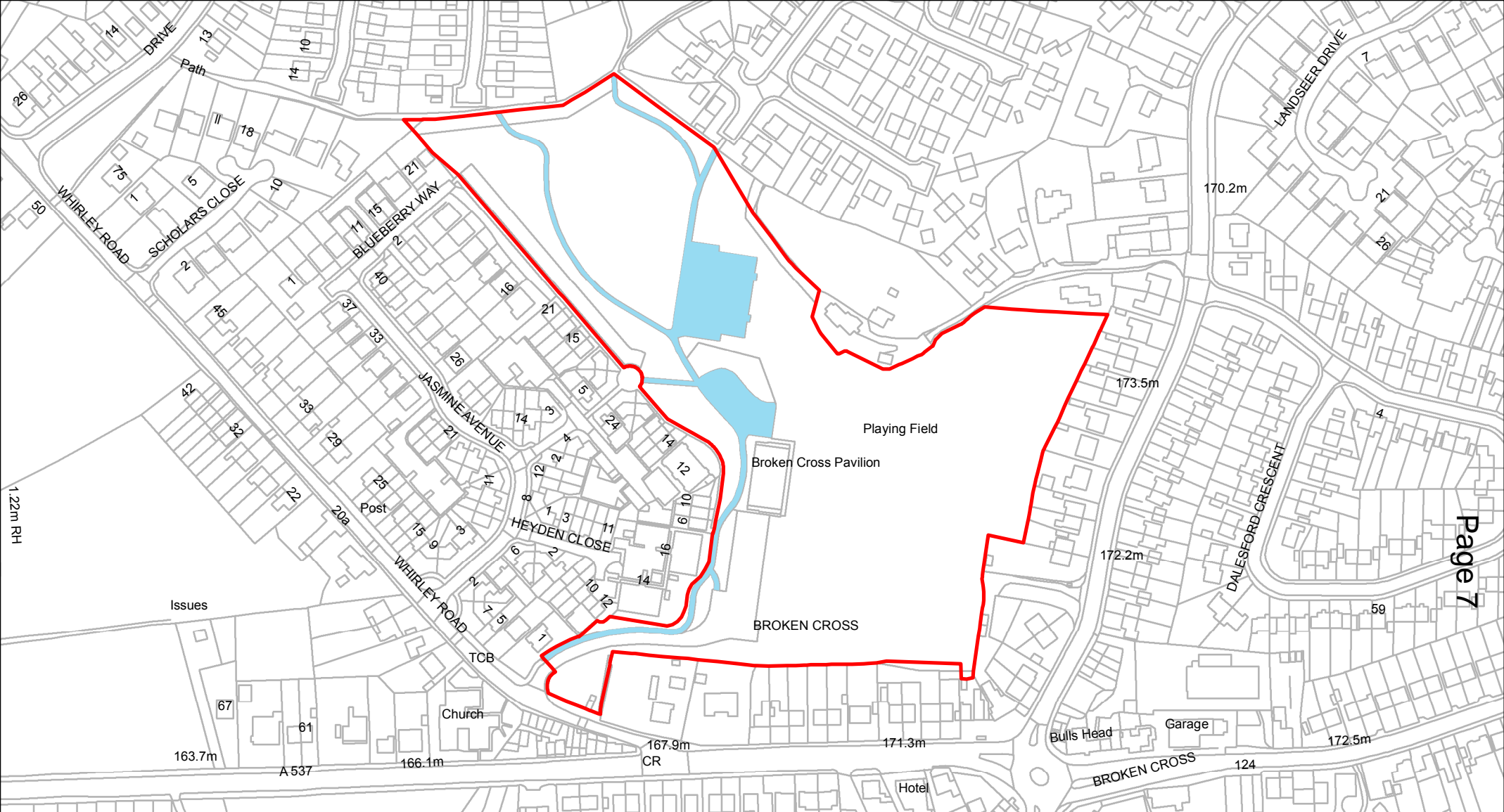
- 10.1 In February 2006, Macclesfield Borough Council granted planning permission for the redevelopment of Henbury High School for the erection of 123 dwellings (05/1184P). The permission is subject to a section 106 agreement dated 24th February 2006 and subsequent variation dated 2nd December 2011, which provided for the provision of Open Space which includes an area of open land, a play area, a multi use games area, a pavilion comprising changing facilities, community rooms, car park and Sports England standard pitches.
- 10.2 The development was enabling development and the capital raised from the sale of the school land for the housing development was utilised by the former Cheshire County Council to help fund the Macclesfield Learning Zone development and relocation of the synthetic turf football pitch to Fallibroome High School (now The Fallibroome Academy).

11.0 Access to Information

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

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Designation: Senior Valuer
Tel No: 01270 686128
Email: paul.carter@cheshireeast.gov.uk

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Jasmine Park, Macclesfield

Plan Ref: 28930 Jasmine Park v2

Date: 14th May 2015



1:2,500
at A4

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CHESHIRE EAST COUNCIL

REPORT TO PORTFOLIO HOLDER –REGENERATION AND ASSETS

Report of: Director of Economic Growth and Prosperity

Subject/Title: Sale of Land at Newall Avenue, Sandbach

Date of Meeting: 13th July 2015

Portfolio Holder: Councillor Don Stockton - Regeneration and Assets
Portfolio Holder

1.0 Report Summary

- 1.1 The purpose of this report is seeking approval to the disposal of land off Newall Avenue, Sandbach

2.0 Recommendation

- 2.1 To maximise value and accept the offer from Morris Homes for the sum of £800,000 (subject to the necessary Portfolio Holder Approval), instruct Legal Services to prepare the contract documentation and proceed to legal completion on terms and conditions to be agreed by the Assets Manager and Head of Legal Services and Monitoring Officer.

3.0 Reasons for Recommendation

- 3.1 Morris Homes has secured planning consent for a 39 dwelling residential development. This includes a provision for 30% affordable housing and financial contributions of £216,665 (circa £5,500 per dwelling) in respect of S106.
- 3.2 In order to get full planning consent this requires completion of a Section 106 agreement in respect of the above obligations. A s106 Agreement cannot be completed until the site is sold because the Council cannot enter into a Section 106 agreement with itself, as landowner and local planning authority, however, the Council can enter into a s111 Agreement with the proposed purchaser which would enable the planning permission to be issued and the buyer to enter into the s106 Agreement when it has an interest in the land. This is subject to the Council entering into a conditional agreement to sell the land to the proposed purchaser.
- 3.3 The Council will receive a capital receipt from the sale of the property which will contribute to the Councils 2015/16 disposals target, as well as providing 39 new homes (which includes 30% affordable housing).
- 3.4 The Councils Planning and Highways Department have both been consulted, as part of the planning application and more recently, with

regards to the suitability of access from both Newall Avenue and Millpool Way (the existing Morris Homes development). It was confirmed that access via Newall Avenue is insufficient to serve a development of this nature alone and therefore recommended that only a small number of dwellings be served via Newall Avenue. In light of this information a sale to Morris Homes is considered the only viable sale option.

- 3.5 A sale to a named party (Morris Homes) is recommended because the offer made by Morris Homes represents best value.

4.0 Wards Affected

- 4.1 Sandbach Heath and East

5.0 Local Ward Members

- 5.1 Cllr Sam Corcoran

6.0 Policy Implications

- 6.1 There are no perceived policy implications

7.0 Implications for Rural Communities

- 7.1 There are no implications for rural communities.

8.0 Financial Implications

- 8.1 The Council will achieve a capital receipt of £800,000 from the sale of Newall Avenue.

9.0 Legal Implications

- 9.1 The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers, however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.

The General Disposal Consent 2003 authorises the disposal of land for 7 years or more at less than best consideration if the undervalue is £2million or less, if the undervalue is higher than £2million consent to the disposal is required from the Secretary of State. The value will be determined at the time of sale or lease. It is noted this report states this is a best value sale.

Notwithstanding the above powers the Council has a fiduciary duty to

the taxpayers and must fulfil this duty in a way which is accountable to local people.

10.0 Risk Management

- 10.1 There are no risk management issues associated with the proposed disposal.

11.0 Background

- 11.1 The site extends to approximately 2.95 acres and is situated within a residential area.
- 11.2 The site consists of a Council depot (to the south western corner) comprising a two storey office building and a number of single garage buildings. The remainder of the site is the former Sandbach Ramblers Club football pitches, which are no longer in use.
- 11.3 The Council depot is currently occupied, but due for closure, as the site is considered surplus to the requirements of Cheshire East Council. The Council's Facilities team has confirmed a minimum of 4 weeks notice will be required in order to allow sufficient time for staff relocation.
- 11.4 Access is currently taken to the property via Newall Avenue, however, in order to serve the proposed development only a portion of the site can be served via Newall Avenue and the remainder of the site will be served through Morris Homes' existing site off Old Mill Road / Millpool Way. Both the Council's Planning Department and Highway Authority have been consulted on this matter and confirmed this aspect.
- 11.5 The extent of the adopted highway within the existing Millpool Way development ends before the boundary of the Council's property; Morris Homes therefore effectively have a ransom strip between the adopted highway and the Council's land. The value of the ransom strip has been reflected within the overall purchase price offered by Morris Homes. *Stokes v Cambridge* (1961) found that the value of a ransom strip should be a one-third split in development profit, which equates to circa £450,000 having regard to Morris Homes's appraisals; therefore a sale to Morris Homes at a price of £800,000.00 demonstrates best value.
- 11.6 A second option has been submitted by Morris Homes following a request from the Ward Councillor for a scheme incorporating bungalows. This offer reduces the number of units to accommodate the bungalows and produces a lower land value.
- 11.7 The receipt is reduced from £800,000 to £525,000 to accommodate bungalows.

12.0 Consultation with Ward Members

Extensive consultation has taken place with the local Ward Member and a request has been made to reduce the number of dwellings in the current Morris Homes scheme to include an element of bungalows.

This will in turn reduce the number of units and receipt.

13.0 Options

13.1 Alternative options for the site are:-

- To agree to the request (made by the Ward Member) and include an element of bungalows; however this will reduce the land value (by £275,000) and require a fresh planning application to accommodate the revised scheme.
- To retain the property and continue to incur holding costs.
- To take the property the market and risk a reduction the overall price due to the ransom value element which emanates from the problems with access to the site once developed.

14.0 Access to Information

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

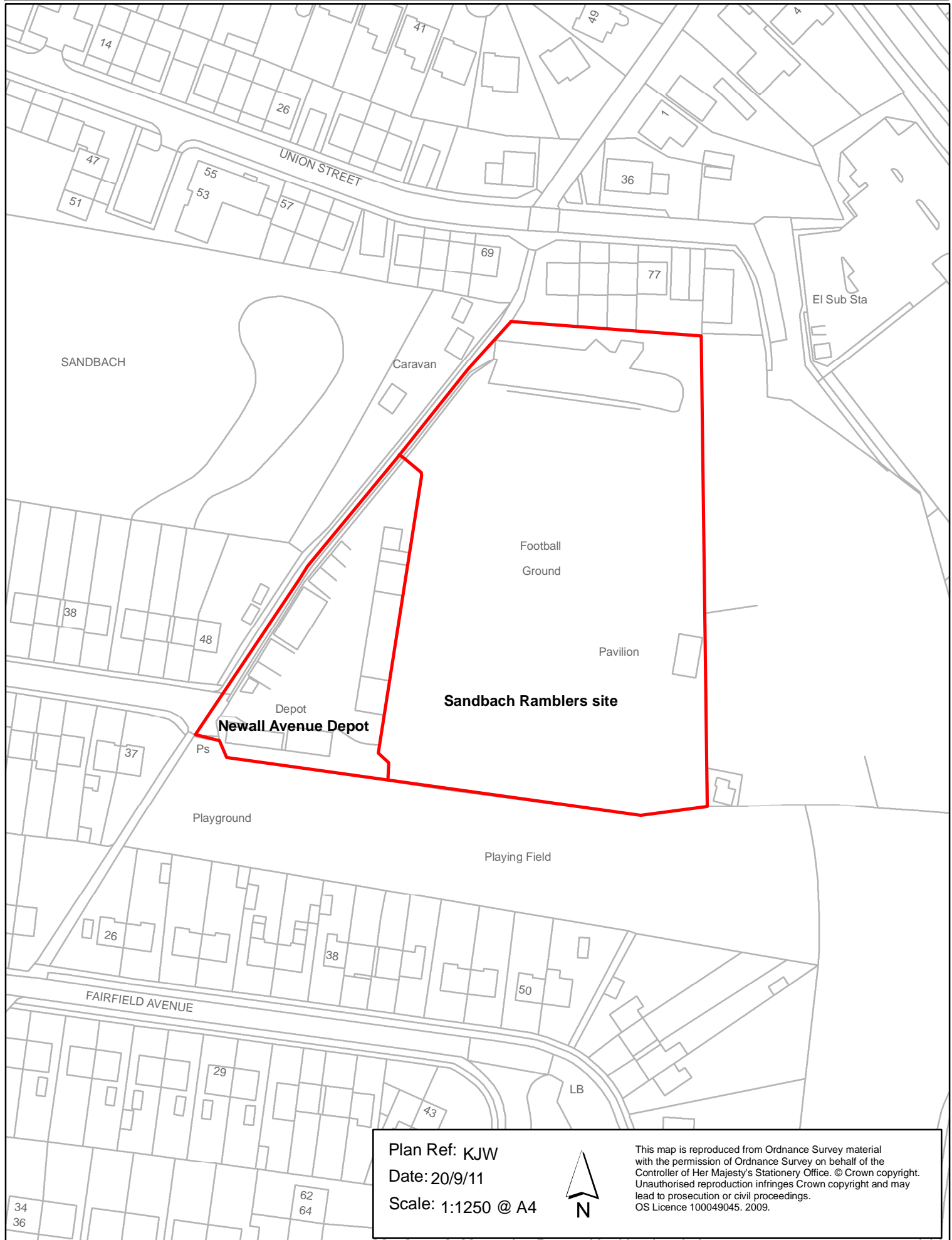
Name: Steve Plack

Designation: Senior Surveyor

Tel No: 01270 686131

Email: steven.plack@cheshireeast.gov.uk

**Newall Avenue Depot/Sandbach Ramblers Site,
Newall Avenue, Sandbach.**



Plan Ref: KJW

Date: 20/9/11

Scale: 1:1250 @ A4



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