

# CHESHIRE EAST COUNCIL

## Cabinet Member for Environmental Services

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**Date of Meeting:** 1 August 2011  
**Report of:** Head of Safer and Stronger Communities  
**Subject/Title:** Proposed Off-Street Parking Places Order – Remenham Car Park, Chapel Lane, Wilmslow.

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### 1.0 Report Summary

- 1.1 This report proposes the amendment of the Macclesfield Borough Council (Off Street Parking Places)(Civil Enforcement and Consolidation) Order 2008 ('the Order') the effect of which will be to introduce control and charging to the car park to be known as the Remenham Car Park, Chapel Lane, Wilmslow, shown edged red on the plan attached at Appendix A, ("the Land").

### 2.0 Recommendation

- 2.1 The Cabinet Member for Environmental Services is requested:

- 2.1.1 subject to (a) statutory consultation; (b) the appropriation of the Land for parking purposes; and (c) the grant of any planning consent required, to approve a proposed amendment to the Order, the effect of which would be to make provision for control and charging for parking on the Land as follows:

- (a) that the charges payable in connection with the use of the Parking Place (Monday to Saturday between the hours of 8.00 am and 6.00 pm) would be:

up to 1hr	up to 2 hrs	up to 3 hrs	up to 5 hrs	up to 6 hrs	up to 10hrs
£	£	£	£	£	£
0.50	1.00	1.70	2.50	3.10	3.30

- (b) that the hours of operation of the Parking Place would be all days and all hours;

- (c) that the Parking Place may be used by the following classes of vehicles:  
(i) motor cars (within the provisions of section 136(2) of the Road Traffic Regulation Act 1984 ('the 1984 Act')); (ii) motor cycles (as defined by section 136(4) of the 1984 Act); (iii) other motor vehicles (of a gross weight not exceeding 3.5 tonnes); (iv) invalid carriages (as defined by section 136(5) of the 1984 Act).

- 2.1.2 to authorise the Borough Solicitor, or officer acting on her behalf, to publish a notice of proposals in relation to the proposed amendment order, with any objections to be made within the statutory consultation period of twenty-one days. In the event that objections are received, for these to be referred back to the Cabinet Member for consideration at a future meeting.
- 2.1.3 in the event that no objections to the proposed amendment order are received, and subject to: (i) the appropriation of the Land for parking purposes; and (ii) the grant of a relevant planning consent (if required), to authorise the Borough Solicitor, or officer acting on her behalf, to make and bring into force the proposed amendment order (as set out in 2.1.1 above) and to give notice thereof in accordance with statutory requirements.

### **3.0 Reasons for Recommendations**

- 3.1 The proposal to introduce at this site charging for parking and control through civil enforcement should help to ensure that the site is not misused, to increase available public off street parking in this part of Wilmslow, and to secure an income for the Council from this asset.
- 3.2 When the site is vacated, there is a distinct risk that current customers of public car parks in the town centre, will seek to transfer to Remenham to avoid paying charges. The site could accommodate a minimum of 57 vehicles which, if parking all day, represent lost income from other car parks of at least £50,000 per annum.
- 3.3 The charges proposed are those presently in place at Broadway Meadow Car Park to the north of the town centre and are proposed for consistency.

### **4.0 Wards Affected**

- 4.1 Wilmslow West & Chorley

### **5.0 Local Ward Members**

- 5.1 Councillor Gary Barton and Councillor Wesley Fitzgerald.

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

- 6.1 This proposal should not lead any significant effect on climate change or Health and Safety.

### **7.0 Financial Implications 2011/12 and beyond (Authorised by the Borough Treasurer)**

- 7.1 There will be a cost implication relating to the publication of the statutory notices. The estimated publicity costs for the statutory notices, in the region of £1,000, will be met from existing budget provision within Parking Services. The commissioning of car park itself will have further financial

implications (details of which are provided within paragraph 7.2 below). If this site is to be ultimately disposed of by the Council, there may be consequent costs of revoking any existing off-street parking places order.

7.2 Subject to the appropriation of the land for parking purposes and subject to any consultation responses received, the proposal for approval of an Off Street Parking Places Order, would enable the Council to make a charge for parking. The capital set up costs of this proposal are estimated at £42,000 with annual operating costs of £2,800. At the proposed prices and estimated occupancy of 50%, income is forecast at a maximum of £27,000 per annum. The car park would need to be operational for a minimum of 19 months to recoup the initial set up costs.

7.3 The introduction of charging should safeguard income on other car parks of c. £50,000 as explained above (3.2).

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

### **8.1 Section 122 Duty**

Section 122 of the Road Traffic Regulation Act 1984 ('the Act') imposes a general duty on the local authority to have regard to certain factors when exercising its functions under the Act, including car parking order making. Section 122 states the following;

8.1.1 *'It shall be the duty of every local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway.'*

8.1.2 The matters specified under s122(2) are as follows:

*(a) the desirability of securing and maintaining reasonable access to premises;*

*(b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;*

*(c) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);*

*(d) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and*

*(e) any other matters appearing to the local authority to be relevant.'*

8.1.3 It is considered that the change proposed in this report contribute to the fulfilment of section 122 duties through introduction of effective controls and facilities on this site.

8.2 The proposals suggested with the report require the proposing and making of an amendment order to amend the Order, the procedure for which is as set out in the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.

8.3 The Regulations prescribe that before making an order a local authority must publish a 'notice of proposals' in a newspaper circulating in the area in which any road or other place to which the order relates is situated and to place documents relating to the proposals on deposit for inspection by members of the public. The local authority is also required to consult with certain prescribed bodies, including the Chief Officer of Police, and is required to take into consideration any objections received within the 21 day consultation period. Failure to consider any such objections would pose a risk to any subsequent decision. If any objections are received then these will be reported to the Cabinet Member for consideration.

#### 8.4 Public inquiry

8.4.1 When considering whether to make an order under the Act, the decision-maker will be aware of the discretion he has to hold a public inquiry. Factors which ought to be taken into account in deciding whether or not an inquiry should be held are:

- the complexity of the proposals;
- the nature of the objections received;
- whether the decision maker is able to take into account competing arguments and weigh them against each other.

8.4.2 The discretion as to whether to hold a public inquiry or not should be exercised according to the rules of natural justice, i.e. fairly in all the circumstances. Any decision is not to be based on any self-imposed rule of policy or practice and therefore the decision must be made in relation to the present circumstances. It must not be based upon any previous presence or absence of any inquiry in similar proposals, nor must it be based upon a fear of setting a precedent.

#### 8.5 Making an order

8.5.1 As soon as practicable after an order is made the Council is required to place a copy of the order with the documents on deposit at the Council's offices and, within fourteen days of making the order, publish a 'notice of making;' inform any person who has objected to the order of the order being made; and ensure adequate publicity is given to the making of the order. A six week high court challenge period will then follow from the date the order was made.

## 8.6 Title to the Land

- 8.6.1 The Land was acquired by Cheshire County Council by way of conveyance dated 10th December 1948. There do not appear to be any restrictions on use of the Land contained in this Conveyance. The Land was formerly part of a larger site which included the neighbouring Health Centre and ancillary open land. By a deed dated 10<sup>th</sup> December 1981 the Health Centre land was vested in the Secretary of State for Social Services. In that deed both parties mutually agreed and confirmed that all rights to light or air way water drainage support and other easements which had until then been used or enjoyed by the Health Centre land over the land retained by the Council and vice versa could continue to be used or enjoyed in the manner in which they have been used or enjoyed until the date of the deed.

## 8.7 Planning permission

- 8.7.1 Advice has been received from the Local Planning Authority indicating that the proposals would constitute a material change of use of the land for planning purposes (i.e. change of use from ancillary car parking to a public pay and display car park) and that planning permission would be required as a result. For this reason the decisions requested within 2.1.1 and 2.1.3 above are subject to the grant of any required planning consent.

## 9.0 **Risk Management**

- 9.1 Full consideration of any objections received in response to the statutory notices will mitigate any risk of challenge.

## 10.0 **Background and Options**

- 10.1 Land which forms a parking place must be acquired or appropriated for parking purposes in order to enable the authority to make an off-street parking places order controlling the use of the car park under section 35 of the Road Traffic Regulation Act 1984 ('the 1984 Act'). There is no evidence within the Council's records to indicate that the Land has been appropriated for parking purposes. For this reason, the decisions at paragraphs 2.1 and 2.1.3 are subject to the appropriation of the land for parking purposes. The decision in relation to appropriation is subject of a separate report to the Cabinet Member for Prosperity and the decisions with this report are strictly without prejudice to the decisions in relation to appropriation.
- 10.2 The reasons for the proposed amendment order are set out within paragraph 3.0 above.
- 10.3 The alternative options are:
- 10.3.1 To adopt the car park but not to charge for use; this would lead to the car park never covering its costs of set up or operation.

10.3.2 Not to adopt the site as a car park; the risks of this are outlined above unless the site is disposed of immediately or put to other use. This is not felt to be likely in the short to medium term.

## **11.0 Access to Information**

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

Macclesfield Borough Council (Off Street Parking Places)(Civil Enforcement and Consolidation) Order 2008

Name: Paul Burns

Designation: Parking Services Manager

Tel No: (01270) 537805

Email: [carparks@cheshireeast.gov.uk](mailto:carparks@cheshireeast.gov.uk)