

Cabinet – 4 February 2015

Update on Changes to Borneo Street Allotment Land

Portfolio: Councillor K Hussain - Leisure and Culture

Related portfolio: None

Service: Clean and Green Services

Wards: St Matthews

Key decision: No

Forward plan: No

1. Summary

- 1.1 Borneo Street Allotments is owned by Walsall Council and is a designated statutory allotment as defined under the Allotments Act 1925. Owing to its statutory nature any significant changes or proposals to extinguish any part of the land are governed by the Allotment Act and require approval by the Secretary of State.
- 1.2 In February 2013 full Council approved the allocation of £50,000 mainstream capital funding for 2013/14 to implement a number of changes at Borneo Street allotments. In February 2014 Cabinet approved the proposed works to the allotments and authorised officers to progress the associated planning application; progress the application to the Secretary of State; terminate and re-grant the lease; and grant a licence for the joint use of the access to the site.
- 1.3 Following Cabinet authority to proceed with the project, officers sought and obtained planning permission for the proposed works to Borneo Street allotments; carried out extensive consultation; identified appropriate land elsewhere as compensation land for that lost by the proposed disposal; and sought and obtained planning permission for the carrying out of works to facilitate the new allotment land, at Clayhanger, as compensation land. Officers have also been in consultation regarding leases and propose to serve notice on the lease imminently. The next step is to seek Secretary of State consent for the disposal land.
- 1.4 During the course of this work, in the Autumn of 2014, new information came to light in relation to the status of the disposal land. Officers consider that, whilst this does not change the proposed steps to be taken, it does change the risks associated with the scheme. For this reason the matter is being brought back to Cabinet for acknowledgement of the new risks and confirmation of authority to proceed. Full details of the risks are set out below in section 3.

2. Recommendation

- 2.1 That Cabinet confirms its authority to proceed with an application to the Secretary of State taking into account the new information that has come to light and the consequent impact upon the risk of securing approval of this application.

3. Report detail

- 3.1 Secretary of State Approval. Due to the statutory designation of the land, the removal of the land from the lease prior to granting of any form of access or license would, under Allotment law, mean disposing of this area of allotment land for which Secretary State Approval is required and a new parcel of land, equal to that to be disposed of, has to be provided by the local authority. A stringent statutory test will be applied by the Secretary of State in determining whether to grant consent for the proposal. This includes:-

- a) that the allotment in question is not necessary and is surplus to requirements;
- b) that adequate provision will be made for displaced plot holders, or that such provision is not necessary or is impracticable;
- c) that the number of people on the waiting list has been effectively taken into account;
- d) that the authority has actively promoted and publicised the availability of allotment sites and has consulted the National Society of Allotment and Leisure Gardeners (NSALG); and
- e) that the implications of disposal for other relevant policies, in particular development plan policies, have been taken into account.

- 3.2 A number of proposals have been considered at length and in consultation with key partners since early 2012.

- 3.3 During late summer 2014, officers were at the point of being ready to submit the application to Secretary of State. However, at that time, key members of the Borneo Street allotment committee terminated their allotment tenancies which, under the terms of their tenancy, required their resignation as committee members. New post holders were therefore appointed,

- 3.4 As a consequence of this change in administration further consultation took place, prior to progressing the Secretary of State application, in order to ensure the new administration of the allotment site were fully abreast of proceedings. An initial meeting took place in September 2014, closely followed by a site meeting in October 2014, when all the relevant development proposals were discussed at length. At the site meeting, several new pieces of information emerged, including that:

an area of 'border' running northwards alongside the existing Borneo Street access, within the proposed area of disposal land had previously been confirmed as of no useful purpose, but the new committee confirmed that each section of the border formed part of the individual tenancies to

allotment holders directly opposite the access, and formed part of their individual growing space, for which they held a tenancy agreement.

- 3.5 The inclusion of growing space, the location of which is indicated in general terms in **Appendix A**, within the disposal land has an impact on the application to the Secretary of State. The Secretary of State application was to be based on the fact that the loss of land was from the access route only. It is now clear that the disposal land includes a small area, about 90m², of growing space.
- 3.6 Cabinet should note that at the time that the planning application was made to the Local Planning Authority this information about the growing space along the edge of the access route was not known. It was believed that none of the access route was comprised of growing space. As such planning permission was granted on that basis. If the Council had known then that the strip of land alongside the driveway was growing space, included in the individual tenancies to tenants directly opposite, the planning application may have been considered contrary to Council planning policy LC1 (saved UDP policy) which states that the loss of urban open spaces will not be permitted other than in limited circumstances. However, as this information has only come to light after the application for and grant of planning permission there is now no action to be taken in this regard.
- 3.7 Having considered the area of the border, and the individual areas of that border attributed to each plot, Legal Services are of the opinion that the impact upon plot holders is minimal, by comparison to their individual overall plot sizes. Nonetheless, the change does bring an added risk to the project, which is an important factor having regard for the statutory and policy tests which the Secretary of State must apply, notably:
- **Statutory Test 1:** The Secretary of State is satisfied that adequate provision will be made for allotment holders displaced by the action of the local authority; and
 - **Policy Test 1:** The allotment in question is not necessary and is surplus to requirement
- 3.8 The tests do not preclude the reclassification of statutory allotment land where there is displacement of plot holders but Legal Services advise that it raises the risk factor significantly. In this case, there is no displacement as such: there are no plot holders being removed from the site or losing their plots entirely. There will however be a small loss of land at 11 of the 40 plots, ranging from between 1.9m² to 14.4m² (the remainder of the affected plots range in size from 132m² to 316.2m²). Whilst the Secretary of State may agree with the Council that this loss is minimal and is adequately offset by that to be provided at Clayhanger and the Borneo Street on-site improvement works, there is a risk that he may disagree now that the disposal land is to include some cultivated growing space.
- 3.9 This point is potentially affected by recent case law, where the courts have refused declassification of allotment land for development on the basis that the allotment was not surplus to requirements (policy test one). In the Farm Terrace Allotment case (Watford) a high court challenge was brought on the basis that the Secretary of State had unlawfully misapplied policy by permitting the appropriation of allotments which were not unnecessary or surplus to

requirements, without recognising that this was a requirement of the policy or explaining the justification for departing from the policy.

- 3.10 This, coupled with an August 2014 High Court challenge, concerning the cutting of allotment grants and increasing of rents by Leeds City Council, has caused all allotment applications to the Secretary of State to come under greater scrutiny and be determined at Ministerial level. Officers therefore considered it crucial that the new information is placed before Cabinet and that a clear decision taking process is recorded, having regard for all relevant information.
- 3.11 It is proposed that the application to the Secretary of State be submitted, in an amended format to account for the changes in circumstances. Now that planning permission has been obtained for the proposed works at Borneo Street, and the proposed works at Clayhanger, the application to the Secretary of State should follow.
- 3.12 Previous Cabinet Authority. Having regard for the newly gained knowledge that the disposal land now includes an area of cultivated land, which is a material change in circumstances, Legal Services advised that the Council must consider the effect upon its authority to seek the consent of the Secretary of State. The report of 5 February 2014 did not mention (and could not have mentioned) that part of the disposal land is growing space, as it was not known at that time. Having regard for a recent successful High Court challenge based upon the Secretary of State not having up-to-date information, the Council must ensure that its decision making process is sound and that this new information is brought to Cabinet's attention.

4. Council priorities

4.1 Promoting health and well being.

The proposals presented in the previous report for Cabinet approval and which remain unchanged will have a positive impact on improving the health and well being:

- a) The clearance of derelict land and increase in provision of allotment plots will provide more food growing spaces, allowing people to live healthy and active lifestyles from an early age, and make healthy choices.
- b) An affordable allotment plot helps to tackle health inequalities.
- c) An increase in allotment land can contribute towards a reduction in the number of people living with preventable ill health and people dying prematurely, whilst reducing the gap between communities.
- d) An increase in allotment plots can contribute towards reduction in levels of obesity, including amongst the young.
- e) An increase in allotment plots can support healthy ageing and independent living of the most vulnerable including those who suffer from poor mental health.

4.2 Helping local high streets and communities

The proposals presented in the previous report for Cabinet approval and which remain unchanged will have a positive impact on the creation of successful communities:

- a) The development of new allotment plots supports the Council policy to sustain and improve the natural and urban environment.
- b) The land in question is held in lease by a voluntary organisation, whom the Council is consulting and liaising with throughout the project, therefore helping to build and further develop the voluntary and community sector in the borough, building resilience to enhance community cohesion.

5. Risk management

5.1 A series of risks in relation to this project were set out in the report to Cabinet dated 5 February 2014. Whilst the obtaining of planning permission was considered a risk (risk 2), this has now been achieved. Similarly, suitable replacement land (risk 3) has also been identified and planning permission obtained for the necessary works.

5.2 Risks 4 (Failure to Obtain Approval from East Walsall Local Management Association (EWLMA) to the changes to the land (and their lease/license)) and risk 5 (Failure to deliver the changes within the resources allocated) remain as set out in the 5 February 2014 Cabinet Report. Only Risk 1, the failure to build a case for the changes and extinguishment of allotment land resulting in Secretary of State not granting approval, requires reconsideration.

5.3 In the previous Cabinet report, Risk 1 was set out as follows:

“6.1.1 This is considered to be a medium/high risk and critically requires the Council to provide evidence that the current allotment land to be disposed of is not required, along with four other tests set out in 3.5 above. It is possible that the Secretary of State may take the view that this first test is not met (namely that it is not the case that the land is not necessary and is surplus to requirements) and that the private interests of the two residents are not in any way a relevant consideration. Ongoing involvement and consultation has taken place with the NSALG who will be a key consultee of the Secretary of State.”

5.4 Officers consider that the new information, that the disposal land includes a small amount of cultivated land, increases the risk that the Secretary of State will refuse the application. It is still however classified as a medium/high risk.

6. Financial implications

6.1 No new financial implications arise from this report but, by way of summary, the financial implications are as follows.

6.2 Council, via the budget setting process for 2013/14, allocated a mainstream

capital sum of £50,000 to pursue and implement the changes. Expenditure of some of this allocation has been incurred including survey charges, property services internal charges and planning applications. A formal request to allocate the remainder of this funding to the 2014/15 budget allocation was agreed due to the complex processes required before physical changes can take place to the site (including serving of 12 months notice to EWLMA pursuant to their lease and anticipated timescale for Secretary of State Decision). A further request will be required to allocate the remainder to 2015/16.

7. Legal implications

7.1 Legal Services have been fully consulted and have provided advice throughout the development of the proposals set out for Cabinet approval.

7.2 The February 2014 Report to Cabinet described the legal implications associated with Risk 1, as follows:

8.3 As the proposals include extinguishing a small part of statutory allotment land, Secretary of State Approval is required by law. The statutory test for extinguishing the land from the allotment land includes the first test of the land is not necessary and is surplus to requirements. What Cabinet must be mindful of is that whilst the existing access may become surplus once taken out of the lease and a joint license agreement has been issued for the Association and tenants, there is an inherent possibility that the Secretary of State may conclude that the existing access is not surplus currently. It is not therefore known whether the Secretary of State will accept any application made on this basis.

8.4 In these particular circumstances, it is possible that the Secretary of State may take the view that this first test is not met (namely that it is not the case that the land is (i) not necessary and (ii) is surplus to requirements) and, in addition, the private interests of the two residents seeking access to the rear of their properties are not in any way a relevant consideration and therefore not grant the approval.

7.3 In addition to the above, there is now the added risk that the Secretary of State will conclude that the first test is not met by reason of the disposal land including a small element of cultivated growing space.

8. Property implications

8.1 No new property implications arise from this report. The proposal seeks to extinguish a proportion of the statutory allotment land and replace it with an equal area of land adjoining an alternative allotment site elsewhere within the Borough.. Although the existing access will no longer form statutory allotment land and instead become the subject of a joint license to the EWLMA and local residents, the net result will be an increase in total allotment land, in addition to positive improvements to the existing allotment land via improved

9. Health and wellbeing implications

- 9.1 No new health and wellbeing implications arise from this report. Allotment and Community Gardens play a key corporate role in improving the borough residents' health and wellbeing.

10. Staffing implications

- 10.1 There are no human resource implications as a result of this proposal.

11. Equality implications

- 11.1 There are no significant equality impacts relating to the proposal and no new equality implications arise from this report. An equality impact assessment has been undertaken.
- 11.2 The proposed development takes into consideration responses from the Allotment Association and tenants as part of the consultation in November 2013. The responses objected to the original proposal that all allotment tenants should use a new access from Cartbridge Lane on the basis that this would inconvenience some plot holders whose plots were close to Borneo Street and, in particular, plot holders in that area who have disabilities and/or impaired mobility. However, this revised proposal, incorporating a shared licence of the existing Borneo Street access, now allows all allotment tenants to access the designated disabled parking space adjacent to the plot designated for tenants with mobility needs. This parking space will form part of the new lease and is not in the proposed joint license area. In addition, allotment tenants whose plots are close to Borneo Street will be able to access the site via the licensed access, and to load and unload from the licensed access in order that they are not required to carry heavy goods any greater distance to their plots.
- 11.3 The revised proposal retains the provision of an additional, primary, access arrangement from Cartbridge Lane South, which will allow many allotment holders to park in a different area of the allotment site, therefore providing a range of improvements which provide enhanced access around the site.

12. Consultation

- 12.1 The information contained within this report has arisen as a result of continued consultation with the new post holders of the East Walsall Local Management Association operating Borneo Street Allotment Site. Consultation with all key stakeholders is ongoing throughout the project.

Background papers

Cabinet Report dated 5 February 2014, together with all enclosures.

Author

Keith Stone
Assistant Director of Neighbourhood Services
☎ 654618
✉ stonek@walsall.gov.uk

Jamie Morris
Executive Director



26 January 2015

Councillor K Hussain
Portfolio Holder



26 January 2015



Borneo Street Allotments
23rd January 2015

Appendix A

