

Cabinet – 25 October 2017

Changes to Borneo Street Allotment Land

Portfolio:	Councillor C Jones, Clean and green
Related portfolios:	None
Service:	Clean and Green Services
Wards:	St Matthews
Key decision:	No
Forward plan:	No

1.0 Summary

- 1.1 Funding to facilitate a number of changes at Borneo Street allotments, to create the access by No's 2 and 4 Borneo Street was approved by full Council in February 2013. An allotment improvement programme was approved by Cabinet for Borneo Street Allotments in February 2014. The improvement programme was updated following additional information and approved by Cabinet in February 2015.
- 1.2 The scheme involved the following:
- a) the removal from the allotment designation of the access road from Borneo Street (which forms a part of the allotment land);
 - b) the creation of a new access road from Cartbridge Lane South into the allotment site;
 - c) improvement works within the allotment site; licences to the allotment association and adjoining landowners for the shared use of the access road from Borneo Street; and
 - d) the allocation of new allotment land at Clayhanger allotment site in compensation for lost land at Borneo Street.
- 1.3 Planning permission was sought and obtained for works to Borneo Street allotment site and to Clayhanger allotment site. An application was also made to the Secretary of State for the removal of the Borneo Street access road from the statutory allotment designation, which was required to allow the scheme to progress.

- 1.4 On 30th August 2017, a decision was issued under Allotments Act 1925 Section 8, by the Planning Casework Unit on behalf of the Secretary of State for Communities and Local Government. The decision refused consent for the application and stated *“Therefore in pursuance of his powers under Section 8 of the Allotments Act 1925, the Secretary of State refuses consent for the disposal of 280 sq.m of statutory allotment land at the Borneo Street Allotments, Borneo Street, Walsall.* The decision letter is attached at Appendix 1.
- 1.5 Legal Services have reviewed the decision and concluded that the decision was well written, clear and concise with no element which would justify a challenge by way of a judicial review. The reasons for each conclusion are given and all aspects of the decision making process have been well covered with no grounds for a challenge.

2. Recommendations

- 2.1 That Cabinet accepts the response from Secretary of State, which refuses consent to dispose of *280 sq.m of statutory allotment land at the Borneo Street Allotments.*
- 2.2 That Cabinet confirms that the scheme should not proceed.
- 2.3 That Cabinet approves £10,000 of capital funding to be spent on improvements at Borneo Street Allotments and for the rest of the capital budget to be reallocated to security works at the depot
- 2.4 That Cabinet acknowledges the abortive costs

3.0 Report detail

- 3.1 In 2011, a need was identified to address on-street parking and associated traffic issues at Borneo Street, Walsall, along with potential re-arrangement of the allotment access, to enable residents at No's 2 and 4 Borneo Street, to access the rear of their properties for parking purposes. Subsequent investigation by officers, involving extensive consultation with East Walsall Local Management Association (EWLMA), who managed the Borneo Street allotment site at that time, resulted in a proposal to create a second, primary, access to the site from Cartbridge Lane South. This proposal facilitated the potential to create a right of way for the owners of numbers 2 and 4 Borneo Street over the allotments in order to gain access to garages at the rear of their gardens.
- 3.2 Borneo Street Allotments site is owned by Walsall Council and is a designated statutory allotment as defined under the Allotments Act 1925. Owing to its statutory nature any changes or proposals to remove any part of the land from the statutory designation as an allotment are governed by the Allotment Act and require approval by the Secretary of State.

- 3.3 In February 2013 full Council approved the allocation of £50,000 mainstream capital funding for 2013/14 to facilitate a number of changes at Borneo Street allotments, to create the access adjacent to No's 2 and 4 Borneo Street. A director-led steering group was established to co-ordinate the scheme. In February 2014 Cabinet approved the proposed access changes 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. This involved extensive consultation with the allotment association, the National Allotment Society, local residents and local utility services. In 2016/17 a further £25k was approved to meet the additional costs for providing additional land providing a total capital budget of £75k.
- 3.4 Following Cabinet authority to proceed with the project and significant feasibility and scoping of the works, alongside sustained consultation with the allotment association, the scheme changed a number of times due to feedback from consultation, and the complexities of the land and the area.
- 3.5 Officers then sought and obtained planning permission for the proposed works to be undertaken. During the course of the extensive planning consultation, officers identified appropriate land elsewhere as compensation land for that element of allotment land which would be lost by the scheme; and sought and obtained planning permission for the carrying out of works to facilitate the new allotment land at Clayhanger, as compensation land. This involved extensive consultation with the Clayhanger Allotment Association, identifying additional budgets and scoping of works, and led to proposed changes to neighbouring council land and grazing agreements. The provision of new allotment land to compensate for that lost is a statutory requirement.
- 3.6 In order to facilitate this proposal Secretary of State approval was required to release the existing access road from the statutory designation as allotment land, as well as the obtaining of planning permission. In addition, changes are required to the site itself to accommodate the proposal and a new lease to be put in place with Borneo Street Allotments.
- 3.7 The application to the Secretary of State was submitted on 10th March 2015. A decision was received on 30th August 2017.

4.0 Council priorities.

- 4.1 This report has a positive impact on the Councils priorities of Safe, resilient and prosperous communities and Sustainable change and improvement for all by continuing to work with the Borneo Street Allotment association ensuring facilities are improved within available resources.

5.0 Risk management.

- 5.1 A series of risks in relation to the project were set out in the report to Cabinet dated 5 February 2014. Some of those risks have dissipated and others have been eliminated by the obtaining of planning permission.
- 5.2 The major risk identified throughout was the uncertainty of whether the Secretary of State will grant authority for the removal of the access road from the statutory designation of allotment land. This risk has now been realised in the response and decision.
- 5.3 As the scheme cannot now progress, there is a negative impact on 2 local residents, who were generally supportive of the scheme. The Borneo Street Allotment Association did not support the change in access to site.
- 5.4 Expectations have been raised with the current Allotment Association following the proposals in 2012 and they are expecting site improvements. The approval of a small maintenance budget from capital funding would provide a small amount of compensation to assist with site improvements which have been placed on hold for several years.

6. Financial implications

- 6.1 There is currently £70,809 remaining in the Council's Capital programme.
- 6.2 The revenue costs of the aborted project were £41,241, made up of expenditure incurred to date including topography and underground utility identification survey, planning fees and surveys, design fees and management fees – these revenue costs have been picked up by Clean and Green.
- 6.3 It is proposed to utilise £10k of the capital allocation at Borneo Street Allotments for minor maintenance and improvements to mitigate the risk identified in 5.4 above.
- 6.4 This would mean approx £60k could be allocated towards essential security works at the depot, with any costs above this being met by Clean and Green

7.0 Legal implications

- 7.1 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.

7.2 Subject to Cabinet approval, it is proposed to formally acknowledge and accept the response from the Secretary of State.

8.0 Procurement Implications/Social Value

8.1 There is no procurement or social value implication with this proposal

9.0 Property implications

9.1 The land has been leased to East Walsall Allotment Association since 1992. Notice was given to determine the lease in April 2015. Without consent to the residents, Legal Services will require instruction from Clean and Green Services to renew the lease based on the existing land.

9.2 Since the conception of this scheme, management of the allotment has devolved directly from East Walsall Allotment Association to tenants of Borneo Street, in a newly formed Borneo Street Allotment Association.

9.3 A re-issued lease for Clayhanger Allotment Association will also now need to be provided, based on the existing land.

9.4 Risks associated with the property implications have been raised in previous Cabinet Reports dated 5 February 2014 and 4 February 2015, which include a failure to obtain approval from Borneo Street Allotment Association to the changes to the land (and their lease/license)

9.5 To accommodate any new lease or license arrangements, all allotment leases were terminated in April 2015 pending new leases being put in place. The statutory period of 12 month notice expired in April 2016, and all allotments are now without a lease in place, until such time as the new leases are granted.

9.6 If the scheme is not progressed, the new leases for Clayhanger and Borneo Street Allotments will relate to the same extent of land as previous leases.

10. Health and wellbeing implications

None

11. Staffing implications

None

12. Equality implications

None

13. Consultation

13.1 Consultation has taken place with Legal Services, Financial Services, Economy and Environment Capital Asset Group, the Portfolio Holder for Clean and Green Services, as detailed in the Cabinet Report Consultation sheet.

13.2 Decisions will be formally communicated by Clean and Green Officers to Ward Councillors, the Borneo Street Allotment Association, the Clayhanger Allotment Association and the occupiers of 2 and 4 Borneo Street following the 25 October meeting of Cabinet.

Background papers

Cabinet Report 5 February 2014 – Changes to Borneo Street Allotment Land

Cabinet Report 4 February 2015 – Update on Changes to Borneo Street Allotment Land

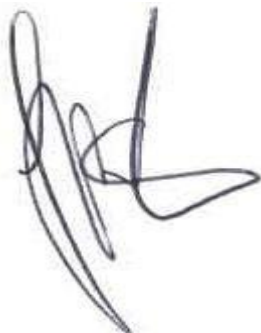
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Simon Neilson
Executive Director
17 October 2017



Councillor Jones
Portfolio holder
17 October 2017

Appendix 1 – Secretary of State Decision



Department for Communities and Local Government

Alison Bate
Strategic Development Officer
Clean and Green Services
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Your ref: MH/AB
Our ref: NPCU/ALLOT/4360/75771
Date: 30 August 2017

Dear Madam

Allotments Act 1925 Section 8 Disposal of Allotment Land at Borneo Street Allotments, Walsall

1. I am directed by the Secretary of State for Communities and Local Government to refer to your email of 10 March 2015 and to subsequent correspondence regarding the Council's proposals for the disposal of 280 sq.m of statutory allotment land in order to carry out various works at the Borneo Street Allotments, Borneo Street, Walsall.

2. As you are aware, the Government is committed to ensuring adequate protection is afforded to allotments. The Secretary of State's consent for disposal will only be given if he is content that Section 8 (the statutory criteria) of the Allotments Act 1925 is satisfied:

"consent may be given unconditionally or subject to such conditions as the Minister thinks fit, but shall not be given unless the Minister is satisfied that adequate provision will be made for allotment holders displaced by the action of the local authority or that such provision is unnecessary or not reasonably practicable".

3. The Secretary of State's guidance, published on 30 January 2014, sets out the assessment criteria against which applications for consent to dispose of statutory allotments are to be determined. These criteria are intended to provide a safeguard against the erosion of allotment sites through pressure on local authorities to provide land for other purposes.

4. The Secretary of State's consent will normally only be given if he is satisfied the following policy criteria have been met:

- i). The allotment in question is not necessary and is surplus to requirements;
- ii). The number of people on the waiting list has been effectively taken into account;

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iii). The council has actively promoted and publicised the availability of sites and has consulted the National Allotment Society;

iv). The implications of disposal for other relevant policies, in particular local plan policies, have been taken into account.

Considerations

5. In relation to Section 8 of the Allotments Act 1925, the Secretary of State considers that the statutory criteria have not been satisfied as the allotment holders who will see the size of their plots reduced to accommodate the new shared access have not been offered alternative provision by the Council. While the Secretary of State accepts the physical constraints preventing any extension to the Borneo Street Allotment site, he notes there are other sites in the surrounding area and that 370.5 sq.m of additional allotment land will be established at the Clayhanger Lane Allotment Gardens, Clayhanger Lane, Walsall.

6. In relation to the policy criteria, the Secretary of State considers that criterion i), has not been met, as the land to be disposed of is not surplus to requirements. Approximately 90.01 sq.m of this land forms active allotment space for 11 plot holders for which no compensatory land has been offered.

7. In relation to criterion ii), the Secretary of State considers that this criterion has not been met as, contrary to the advice received by the Council in October 2014 from the East Walsall Local Management Association (EWLMA), that there is no waiting list at the Borneo Street Allotments, both the Borneo Street Allotment Association (BSAA) and the National Allotment Society (NAS) state there is a waiting list for plots on the site. The Secretary of State also notes that, following advice received from Walsall Council on 13 February 2017, there is a waiting list for plots on the surrounding sites at Forest Avenue; Blakenall Lane; Cartbridge Lane and Lane Avenue.

8. In relation to criterion iii), the Secretary of State considers that this criterion has been met as Walsall Council has provided evidence of the material it produces to market and promote its allotment sites, including leaflets and posters of events. The Council also publishes an allotment & community garden brochure giving contact details for each site in the borough, has various web pages and uses other social media to engage with the local community.

9. In relation to criterion iv), the Secretary of State considers that this criterion has been met as both the saved policies of the adopted 2005 Walsall Unitary Development Plan and the adopted 2011 Black Country Core Strategy identify the Borneo Street Allotment site as forming part of the Green Belt where such allotment uses are appropriate. The Walsall Unitary Development Plan also includes a saved policy covering Allotment Gardens.

10. The Secretary of State makes decisions with consideration of the relevant policy, unless there are exceptional reasons to justify departure from that policy. In this instance, the statutory criteria have not been met and policy criterion i) and ii) have not been met and there are no exceptional circumstances to justify departure from policy.

11. Therefore in pursuance of his powers under Section 8 of the Allotments Act 1925, the Secretary of State refuses consent for the disposal of 280 sq.m of statutory allotment land at the Borneo Street Allotments, Borneo Street, Walsall.

Yours faithfully

Dave Jones

Dave Jones

Senior Planning Manager