

## **CABINET**

**17 DECEMBER 2013**

### **FORMER PARK AND RIDE SITE, MARCONI WAY**

Portfolio Holder: Councillor Alan Jarrett, Finance

Report from: Perry Holmes, Assistant Director, Legal and Corporate Services

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#### **Summary**

This report seeks delegated authority for officers to appropriate the former Park and Ride site at Marconi Way.

#### **1. Budget and Policy Framework**

1.1 In accordance with the Constitution, Cabinet authority is required to appropriate land.

#### **2. Background**

2.1 The above Park and Ride site (as shown approximately edged black on the attached plan) has been closed and Cabinet at its meeting of 13 March 2012 agreed to delegate authority to the Chief Finance Officer, in consultation with the Portfolio Holder for Finance, to declare surplus and dispose of the site.

2.2 Kent Fire and Rescue Service (KFRS) has agreed to purchase the site and has obtained planning permission for a fire station on it.

2.3 The site and other land is subject to a covenant given by the Council in a lease of the adjoining site, not to use the site for any purpose other than a surface car park and ancillary purposes and for open space. The sale to KFRS is conditional upon this covenant being released.

2.4 Discussions have been held with the beneficiary of the covenant regarding the release of the covenant, but one of the pre-conditions required by the beneficiary for the release requires the agreement of third parties as well as the Secretary of State's consent and one or both of these may not be forthcoming.

- 2.5 The Council has the general power under Section 122 of the Local Government Act 1972 to appropriate land within its ownership for any purpose for which it is authorised to acquire land by agreement.
- 2.6 Where land is appropriated for planning purposes Section 237 of the Town and Country Planning Act 1990 ("TCPA") provides that the development of that land overrides third party rights enjoyed over that land, subject to the right of the beneficiaries of such rights to compensation.
- 2.7 Following appropriation, the Council can transfer the site to a third party (in this case KFRS) free of the third party rights.
- 2.8 The claim for compensation under Section 237 is based on the depreciation in the value of the beneficiary's land caused by the loss of the right and is enforced against the owner of the land. However if the owner does not meet this obligation then the compensation claim can be enforced against the local authority.

### **3. Options**

#### **3.1 Do nothing**

This is not considered to be an option. The sale to KFRS is conditional upon the release of the covenant, which would otherwise prevent the building of the fire station and KFRS will not want to acquire the site unless it is free of the covenant.

#### **3.2 Apply to the Lands Tribunal.**

The Council could apply to the Lands Tribunal to have the covenant removed under Section 84 of the Law of Property Act 1925. However, this process takes a long time and can be expensive and success cannot be guaranteed.

#### **3.3 Appropriate the land.**

The Council could appropriate the site using Section 122 of the Local Government Act 1972 and Section 226 of the TCPA to planning purposes and then Section 237 of the Town and Country Planning Act 1990 could be used to override the covenant.

### **4. Advice and Analysis**

- 4.1 It is considered that appropriation is the best option.

### **5. Consultation**

- 5.1 Consultation has taken place with the relevant directorates and no objections to this proposal have been received.
- 5.2 KFRS' planning application for development of the site as a fire station has been subjected to the usual consultation and only 3 people have objected.

## 6. Financial and legal implications

- 6.1 In accordance with the Constitution, any decision to appropriate a site needs to be taken by Cabinet.
- 6.2 Section 122 of the Local Government Act 1972 enables the Council to appropriate land from one purpose to another if immediately before the appropriation, the land is no longer required for the purpose for which it is held.
- 6.3 Section 226 of the TCPA provides that a Council may acquire or appropriate land for planning purposes, if it thinks that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land which is likely to contribute to the promotion or improvement of the economic social or environmental well-being of their area.
- 6.4 Once an appropriation has taken place, Section 233 of the TCPA enables the Council to dispose of the land appropriated for planning purposes to such person, in such manner and subject to such conditions as appear to it to be expedient in order to secure the best use of the land or to secure the erection, construction or carrying out on it of any buildings or works appearing to it to be needed for the proper planning of the area. The consent of the Secretary of State is required where the disposal is for less than the best consideration. The price agreed for the sale of the site is considered to be best consideration.
- 6.5 Provided that the site has been validly appropriated for planning purposes, then under Section 237 of the TCPA, the erection, construction or carrying out or maintenance of any building or work on land which has been acquired or appropriated (by the Council or any person deriving title from the Council) is authorised if done in accordance with planning permission, despite the fact that it may interfere with certain private rights such as restrictive covenants and easements.
- 6.6 The beneficiary of the covenant is entitled to claim compensation if it has suffered loss as a result of the overriding of the covenant. However, given the nature of the covenant, it is considered unlikely that the beneficiary would be successful in making a claim. Nevertheless, KFRS may require the Council to indemnify it against any successful claim.

## 7. Risk Management

Risk	Description	Action to avoid or mitigate risk	Risk rating
KFRS refuses to purchase the site.	The Council cannot secure the release of the covenant and KFRS refuses to buy the site as result.	Appropriate the land and override the covenant.	B2
A claim for compensation is made by the	As a result of development of the land, the	Try to agree terms with the beneficiary for a	C2

beneficiary of the covenant.	beneficiary of the covenant claims compensation.	release. However, if terms cannot be agreed, it seems very unlikely that the beneficiary could prove that it is entitled to compensation.	
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## 8. Recommendation

- 8.1 That Cabinet delegates authority to the Assistant Director of Legal and Corporate Services, in consultation with the Portfolio Holder for Finance, to appropriate the former Park and Ride site and to meet any compensation claims payable as a result.

## 9. Suggested reasons for decision

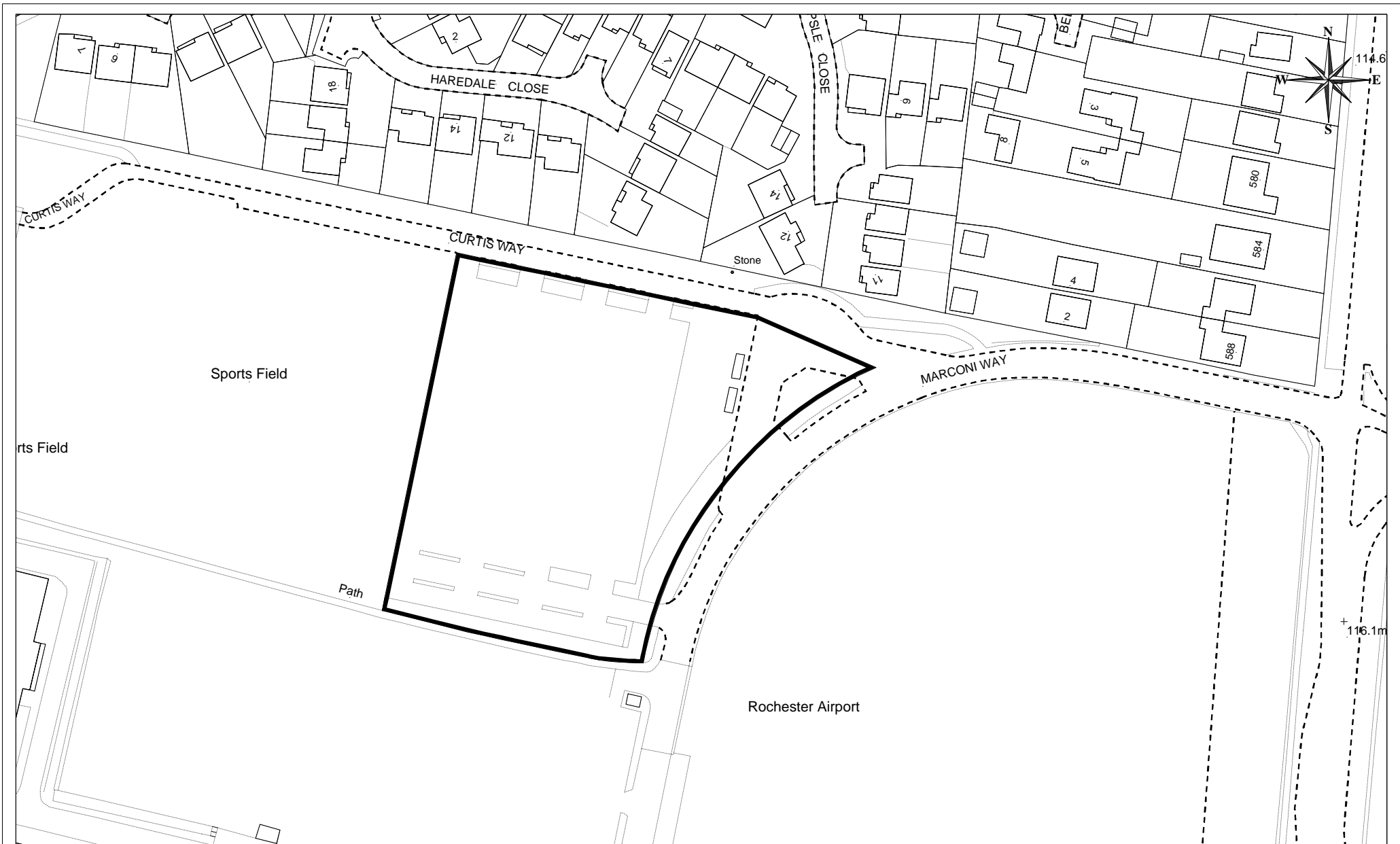
- 9.1 The appropriation of the land will allow the Council and KFRS to override the covenant so that the development of a fire station on the site can proceed.

### Lead officer contact

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### Background papers

Report to Cabinet 13 March 2012 Park and Ride Site, Marconi Way, Rochester  
<http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MID=2343#A15870>



**Park & Ride Site  
Marconi Way**