



DERBY CITY COUNCIL

COUNCIL CABINET
21 April 2009

ITEM 14

Report of the Corporate Director of Corporate
and Adult Services

St Alkmund's Playground – Darley Ward

SUMMARY

- 1 To consider the options for the future holding and management of the former St Mary's School Playground on Darley Lane including an application for village green status.

RECOMMENDATION

- 2.1 To retain the land as a community garden
- 2.2 To voluntarily register the St Alkmund's Playground as a Village Green
- 2.3 To authorise the Corporate Director of Corporate and Adult Services to negotiate terms with the River Street Community Group for a long term management agreement for the land

REASONS FOR RECOMMENDATION

- 3 To permanently protect the land as community open space in recognition of the former gifting as a playground/garden, its use as a burial ground and the dedication and commitment of many local residents to create a community garden.

4.1 **Site History**

This site was a burial ground until the 1930's when it became derelict and overgrown. The remains have apparently been removed from the site and reburied elsewhere. It then appears that the land was gifted to the St Alkmund's church as a public playground in the 1930's with a trust fund. Residents recall there being play equipment and a park keeper on site. St Mary's School used the land as a playground and it was eventually acquired by the Council under compulsory purchase powers in 1970. Once in Council ownership the playground was used by the School during school hours and continued to be available for public use outside of those times.

When St Mary's School relocated to its new site in 2002, the budget for the playground maintenance also transferred to repair the new playground leaving no budget for the site. At that time the then Director of Education confirmed to residents that once the School relocated the land would continue to be available for public use. It became surplus to requirements and through Asset Management Group no service had a future requirement for the land.

In order to secure the site for open land for local people a village green application was submitted by a resident in 2006.

4.2 **Options**

As it was apparent that there was strong local feeling about the future of this site. Members and Officers have been meeting with residents to consider the future options.

Do nothing	Not a long term option. The site needs management to prevent tipping and anti-social use.
Car Park – community	Residents' car parks that are not directly overlooked by users are generally not well used and are expensive to manage and maintain. There has been no approach from local people for this use
Church car park	The land has been used on a temporary basis in the past for this use but again is not considered to be the use wanted by residents or the best long term solution.
Sell /lease to the neighbouring business	The former nursery next to the site has been converted to offices. These do not appear to be in use and would not require a site this size for parking. Again not an option favoured by residents
Community garden or playground <ul style="list-style-type: none"> • on lease • Public open space • Village green 	This is the option favoured by residents and the 3 sub options are considered in more detail later in this report
Sell as a development site	An early option, but one which was put on ice once the history of the site was investigated. Also given the sites previous use as a burial ground and the previous gifting for a garden then development on the site is considered disrespectful by residents
Develop for a Council operational use	Considered by Asset Management Group but no departmental requirement for a site of this size and location – also for the reasons above

Given the history of the site as a graveyard and the former gifting as a community playground the use as an open space either for gardens or play space is the one now favoured by Officers, Ward Members and residents. The land is currently unused and an eyesore for the local community. The lack of care encourages anti social behaviour. The tarmac surface is deteriorating and its presence causes an additional problem of flooding (during inclement weather) for the neighbouring gardens. Whilst there are two very large public parks in this area these are facilities that serve the whole city and there is very little community public open space in this densely developed suburb. Additionally the area has seen a number of new apartment developments and a large hotel which have no gardens and indeed some overlook the playground. The area mentioned above is also within the Derwent Valley World Heritage buffer zone. The options were taken to the Neighbourhood Board in January 2008 and open use was also the preferred future use.

4.3 **Delivery of the preferred option**

Local residents are keen to lead on the development and management of this site. Since this option appraisal first started they have formed the River Street Community Group (RSCG), which is fully constituted with trustees in place and an active and enthusiastic membership. As an association they will be able to access sources of external funding not available to the Council. There is no budget for the site and the grounds maintenance contract is already very stretched with no capacity to take on more sites without additional funding being made available.

There are a number of alternatives for passing control of the site to the RSCG which are considered below.

1. Lease to RSCG	RSCG do not favour this option as they do not believe that it offers enough long term protection for the site. The lease could be of a significant length – say 99 years but would be conditioned such that if the land was unused in the future the lease could be terminated. This is in the spirit of the Government's agenda on transferring control of assets to the community. RSCG would not wish to have responsibility for boundaries at this early stage.
2. Declare the site as Public Open Space (POS)	This option would change the status of the site and protect it under Public Health Act legislation. This is not such a degree of protection as under village green status. Under this option the RSCG could be granted a management agreement to layout and maintain the site and again this could be for a considerable period with rights to terminate. Another alternative would be for the Council to manage the POS but there is no budget for initial works or ongoing maintenance. This also does not harness the enthusiasm of residents to lead the project.
3. Voluntarily register the site as a village green and grant a management agreement to RSCG	Village green status does bring with it considerable restrictions on the current management and future use of the site. Once declared as a Village Green the site must be kept open at all times, and cannot be used for anything that would be inconsistent with the right of local people to use the land for lawful recreational purposes. The status can be changed by justifiable application to the Secretary of State. In such circumstances replacement land in close proximity to the site will be required, if the area green to be lost is over 200sq m (this site is 2118 sq m).
4. Oppose village green application	We have agreed with the applicant and the registration authority that the present application for the registration of the land as village green be held in abeyance pending our consideration of voluntary registration. It is not possible at this stage to advise on the likely outcome of the application should this proceed. An earlier application for registration for this site was rejected due to a sign indicating the use was by permission. This new application attempts to prevent further information to overcome that earlier reason for rejection. If we continue to object to the application this will have a resource implication particularly should the matter be dealt with by way of inquiry/hearing. In addition to the expense of continuing to object we may lose the good will recently built up with the community.

5. Transfer the freehold of the site to residents	RSCG do not want the freehold at this stage. They are not ready to take on liability for the structural walls and would like this project to be in partnership with the Council. This situation could be reviewed again in the future.
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- 4.4 The Communities White Paper and Quirk Review identified the need to consider transferring surplus or underused assets to the third sector. This could be either freehold or leasehold and at market value or less. Any such transfer would need to be backed up by a robust business case and be sustainable.

The use of this land as a community garden appears to be supported by residents and Ward Members and appears to be entirely appropriate given the site's history.

- 4.5 The arguments around the holding of the land are much more closely balanced. Certainly the garden would be difficult to create without a partnership with residents who can access funding, provide voluntary labour and the enthusiasm and drive to take this project forward and to create a sense of ownership to protect it. Were it not for the previous gifting of the site to the community as a garden and its former use as a graveyard we would not be considering voluntary registration as it is too permanent and tying. However the site will always have been a graveyard and use for other purposes does seem disrespectful. There will need to be some initial investment by the Council to prune the trees and repairs the walls but the expectation is that the community will be able to raise funding for the creation of a very special public garden and have the drive and ability to manage the facility at little or no cost to the Council in the future. Concerns that this could set a precedent are defended by the very unusual history of this site. Additionally the fact that the Council had voluntarily chosen to register another piece of land would have no relevance in assessing whether Village Green criterion had been met on future applications.

- 4.6 The following are Darley Neighbourhood Board's priorities and the interim priorities for the Community Budget. Interestingly, should this project proceed it appears to fulfil all of these.

1. Projects to enable local people to become more involved in activities in their neighbourhood.

2. Projects to support green and open spaces in Darley.

3. Projects to support local community and voluntary groups

4. Projects to support increasing leisure and sporting facilities and opportunities for the local community

5. Projects to support conservation activity in the neighbourhood.

OTHER OPTIONS CONSIDERED

- 5.1 The purpose of the report is to explore the options for both the use of the land and the basis of holding it in the future. Other options are considered in some detail in the supporting information

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Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – site plan

IMPLICATIONS

Financial

- 1.1 The site had been valued as a development site when it first closed as a school playground. Subsequent investigations have shown that it was formerly a burial ground and was previously gifted to residents as a play area. Given the site's history, development would appear inappropriate which significantly reduces its value.
- 1.2 Revenue costs for site repair and maintenance were transferred with St Mary's school to their new site. There is no specific budget to meet these costs.
- 1.3 The residents group will be better able to access external funding and will be able to arrange working groups of local people to carry out some of the work. They will also be in a much better position to access external funding sources and have already identified some opportunities for funding. A small grant has been given to the group by the Neighbourhood Board.
- 1.4 There are some immediate costs for wall repairs and tree pruning. Officers are exploring how these can be contained within existing budgets.

Legal

- 2.1 Three of the trees on the site are protected by Tree Preservation orders and the site is on the edge of Strutt's Park Conservation Area.
- 2.2 The remains appear to have been removed from the site but if any bones are found during works this will need to be properly exhumed and reburied.
- 2.3 There appears to have been some encroachment onto the site by a neighbouring business and officers are dealing with this.
- 2.4 Under the Commons Act 2006, there are four circumstances whereby land may qualify for registration as town or village green. The three most relevant ones for the purposes of this report are:
 - (a) where a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application
 - (b) where such inhabitants have so indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; they ceased to do so on or before 6th April 2007; and the application is made within the period of five years beginning with the cessation of use
 - (c) where the owner of any land applies to the commons registration authority to register the land as a town or village green

- 2.5 The registration of land as a Green does not confer any rights of ownership or control on the public. The land still belongs to the landowner and the legal obligations and duties of landowner still apply. The landowner will therefore have a duty to maintain the land and a right to protect it from, or bring an action to remove trespassers. What the landowner cannot do is use the land or do acts, including building, on the land which would interrupt its use or enjoyment by local people. For instance the landowner cannot use the convert the land to allotments. It is clear then, that the landowner's ability to develop or change the use of even part of the land is substantially curtailed as any development must be subject to local people's right to use the land for sports and pastimes. The landowner can sell the land, but any purchaser will have to buy subject to those rights.
- 2.6 Once land is registered as a village green it effectively remains so in perpetuity. There is provision for the landowner to apply to the Secretary of State for release of the land from the restrictions of green status, subject to specified restrictions, e.g. if the land to be released has an area of more than 200 sq metres the Secretary of State may only release the land if replacement land in close proximity to the same area is provided by or with the consent of the landowner. There is no such land within the Council's ownership. There are important legal differences in status between land designated as a Green on the one hand, and land registered as Open Space. National laws give powers to local councils to acquire, transfer and manage open spaces. These include the Open Spaces Act 1906 s9, 10 and 15; the Public Health Act 1875 s164 and the Local Government Act 1975. Local Authorities can also decide which open green spaces should be classified by applying national Planning Policy Guidance (17) to the needs of the local community.

Personnel

- 3.1 To work effectively in partnership with the RSRG an officer needs to be identified to take on this role but this would be in addition to other duties

Equalities Impact

- 4.1 As a village green the site would need to be kept open to everyone at all times. Equalities considerations could be included in any lease or management agreement.

Corporate objectives and priorities for change

- 5.1
- Making us proud of our neighbourhoods
 - Leading Derby towards a better environment
 - Helping us all to be healthy, active and independent
 - Giving you excellent services and value for money

