

REPORT TITLE: Allotment Provision in the Parish of Silverdale

Submitted by: Head of Operations – Roger Tait

Portfolio: Environment and Recycling/Planning, Regeneration and Town Centres Development

Ward(s) affected: Directly – Knutton/Silverdale and Silverdale/Park Site

Purpose of the Briefing Paper

- (a) To inform the Cabinet of the legal position in respect of the provision of allotments in the Parish of Silverdale.
- (b) To seek authority to progress action to regularise the position.

Recommendations

- (a) That the report be received.
- (b) That the legal position in respect of the provision of allotments in the Parish of Silverdale be acknowledged.
- (c) That Officers are authorised to progress actions to regularise the position as follows:-
 - (i) That the Park Road site is leased to Silverdale Parish Council for the purpose of meeting it's statutory duty to provide allotment land within the parish.
 - (ii) That tenancy agreements with current plot holders on the Park Road site are transferred to Silverdale Parish Council and any outstanding rent due to the borough council is collected. Following this, new tenancy agreements are offered by Silverdale Parish Council at the appropriate time.
 - (iii) That actions (i) and (ii) are completed by early in the new year 2014.
 - (iv) That Silverdale Parish Council is asked to confirm whether or not it wishes to lease the The Acre site (either in whole or in part) for the purpose of meeting it's statutory duty to provide allotment land within the parish.
 - (v) Subject to a positive response to (iv) that the The Acre is leased (either in whole or in part) to Silverdale Parish Council (the precise area to be agreed by negotiation in conjunction with the relevant portfolio holder).
 - (vi) That tenancy agreements with current plot holders on the agreed section of the site are transferred to Silverdale Parish Council and any outstanding rent due to the borough council is collected. Following this, new tenancy agreements are offered by Silverdale Parish Council and ploholders are relocated within the agreed section as part of a consolidation plan for the site.
 - (vii) That alternative plots in the agreed section of the site are offered to plot holders affected by (v) for allotment gardening purposes only.

- (viii) That any remaining section of the site is retained by the Borough Council.
 - (ix) That if a negative response to (iv) is received, the Borough Council concludes all tenancy agreements with existing plot holders on The Acre with 12 months notice and any outstanding rent is collected.
 - (x) That the Borough Council offers alternative plots to plot holders who are not residents of Silverdale Parish, at other allotment sites in the Borough where capacity exists to do so.
 - (xi) That if insufficient capacity exists to accommodate plot holders from The Acre, a further report on the implications be brought to Members for consideration.
 - (xii) That the decision to temporarily suspend the letting of vacant plots at both Park Road and The Acre, pending transfer of the responsibility of allotment provision in Silverdale to the Parish Council, is noted.
 - (xiii) That the tenancy agreements with any ploholders on the Acre who are currently not using the plots for allotment gardening purposes and may therefore be in breach of the tenancy agreements are concluded with immediate effect, if it is found that a breach has occurred.
- (d) That regular reports on progress with these actions are submitted at appropriate times to keep Members informed.

Reasons

- (a) To regularise the legal position in respect of the provision of allotments in the Parish of Silverdale.

1. Background

- 1.1 The Cabinet resolved to carry out a review of the allotments service at the meeting of the 30 November 2011. Subsequently, at the meeting of the 14 November 2012, the Cabinet resolved that further consultation and scrutiny be undertaken on the preferred options for the review.

This scrutiny work is being undertaken by a Task and Finish Group of members of the Active and Cohesive Communities Overview and Scrutiny Committee, supported by Officers and is due for completion in January 2014.

- 1.2 Officers are progressing a number of work streams to inform and support the review and information is being reported regularly to the Allotments Review Task and Finish Group.

2. Issues

- 2.1 The Council operates seven allotment sites across the Borough, including two sites within the Parish of Silverdale. There are a number of other allotment sites in the Borough, operated by Parish Councils and charitable or voluntary organisations.

- 2.2 As part of a work stream reviewing the legal framework of allotment services, information was found in the Local Government Act 1972 (Schedule 29, Part II, paragraph 9(i) which stipulated that:-

“As respects a parish in England those functions under the Allotments Acts 1908 to 1950 which, apart from this paragraph, would be exercisable both by the District Council and the Parish Council or parish meeting shall not be exercisable by the District Council.”

Legal advice has been provided on this matter which states that it appears that where there is a parish, only a Parish Council can provide allotments in the Parish and must let these only to residents of the Parish. Therefore, in Silverdale, only Silverdale Parish Council can provide allotments. The Borough Council cannot provide allotments in Silverdale or in any other area where there is a Parish Council.

This appears to be consistent with other parished areas in the Borough (Kingsgrove, Madeley, Audley, Loggerheads etc) where the Parish or Town Council provides allotments for the use of its respective parishioners.

- 2.3 In effect, this means that the Borough Council has no powers to provide allotments in the Parish of Silverdale and must, therefore, cease to do so as soon as is practical.

However, it is recognised that it would be unfair on plot holders and the Parish Council to simply cease providing this service with immediate effect.

Therefore, actions have been implemented to seek to commence a phased withdrawal of the service by the Borough Council and to support the Parish Council in assuming the role of service provider for allotments in Silverdale.

A summary of actions undertaken by Officers to date is as follows:-

- Clarification and confirmation of the legal position.
 - Briefing of Portfolio Holders for Culture and Leisure and Environment and Recycling.
 - Briefing of Ward Councillors.
 - Briefing of Chair of Active and Cohesive Communities Overview and Scrutiny Committee.
 - Meetings with the Chair of Silverdale Parish Council to agree the legal position and begin to plan transition.
 - Analysis of the two Borough Council operated allotment sites in Silverdale (The Acre and Park Road).
 - Provision of information in relation to both sites to Silverdale Parish Council (copy attached at Appendix 1).
 - Briefing of plot holder associations at The Acre and Park Road.
- 2.4 Discussions with Silverdale Parish Council have been progressing on how to implement the transition of the allotment service in the Parish.

Silverdale Parish Council accepts that it has a duty to provide the service in the Parish and has appointed a member to be the lead representative in taking this work forward.

The Parish Council has informally indicated that it is willing to take on responsibility for the Park Road site in its entirety and has informally indicated that it is willing to consider the principle of taking on responsibility for The Acre, either in whole or in part, dependent on a consolidation plan being implemented by the borough council.

2.5 It is, therefore, considered necessary at this stage to seek formal authority from the Borough Council to continue with this work and to negotiate an appropriate agreement with Silverdale Parish Council.

2.6 In relation to the Park Road site, it appears relatively straight forward to achieve the handover to Silverdale Parish Council.

The Borough Council holds freehold title to the land and can, therefore, choose to dispose of it by way of sale or lease to Silverdale Parish Council. The Borough Council is under no obligation to dispose of the land to the Parish Council to enable the continuation of an allotment service at this site. The duty to provide land for allotments rests with the Parish Council. However, it is considered appropriate to assist the Parish Council and avoid potential inconveniences to allotment plot holders by offering a lease of this site.

Advice has been received from colleagues in the Council's Property Section as to the most appropriate method of disposal to achieve "best consideration", and it is considered appropriate to offer a lease for the purposes of allotment provision only. The lease would be conditional on the land reverting to the borough council should the use of the land for allotment purposes cease. It is therefore proposed to agree a date with the Parish Council at which point it will become the operator of the allotment service at Park Road and to then give plot holders formal notice of the change in landlord. A target date of early in the new year 2014 has been informally agreed.

Existing tenancy agreements with the Borough Council would transfer to the parish council with an appropriate period of notice and plot holders would subsequently be issued with new tenancy agreements from the Parish Council.

Any outstanding rent due to the Borough Council would be requested from plot holders and then the Parish Council would set its rent for the period of the new tenancies. Other details, such as transfer of the water bill for the site to the Parish Council would also be dealt with at this stage.

2.7 Dealing with matters at The Acre is considered to be more complex.

The Borough Council must withdraw from providing an allotment service at this site as soon as possible. It holds freehold title to the land. At present, Silverdale Parish Council has indicated that it would consider the principle of taking on responsibility for this site, either in whole or in part by way of a

lease, subject to agreement of detailed terms including a consolidation plan for the site to be implemented by the borough council.

Therefore, the options for the Borough Council appear to be as follows:-

Option 1

Cease to provide an allotment service at The Acre and withdraw from the site.

This would involve terminating all tenancy agreements with current plot holders by giving 12 months notice.

Current plot holders who reside within the Parish of Silverdale would have to approach the Parish Council to seek alternative provision, whilst those who reside outside the Parish would be entitled to seek alternative provision from the Borough Council.

The Borough Council may therefore be required to provide a new site elsewhere in the Borough (preferably in a location near to the site to be vacated) if there is insufficient capacity on other Borough Council-owned allotment sites to accommodate all non-parishioner plot holders from The Acre.

The Borough Council has a duty, in non-parished areas, to provide land for allotments if the demand can be demonstrated.

Option 2

Phase 1 - Rationalise the current use of the site by condensing it into an agreed portion and lease this area to Silverdale Parish Council for the purpose of continuing to provide allotments.

Phase 2 - Consider either retaining the remaining vacated section of the site or leasing it to the parish council if further demand exists for allotment use within the parish.

This would require relocation of some current plot holders within the site by effectively transferring current tenancy agreements with the Borough Council to Silverdale Parish Council and offering alternative plots on the site.

Any outstanding rent due to the Borough Council would be requested from plot holders and then the Parish Council would set its rent for the period of the new tenancies.

Other details, such as transfer of the water bill for the site to the Parish Council would also be dealt with at this stage.

- 2.8 In view of the above options, it has been considered to be prudent to temporarily suspend any future lettings of vacant plots (at both The Acre and Park Road sites) until the transfer of the responsibility for providing allotments to Silverdale Parish Council has been completed. This course of

action has been taken in conjunction with the Portfolio Holder for Environment and Recycling.

- 2.9 There are currently some plots on the Acre where tenants are not using the plots for allotment gardening purposes and may therefore be in breach of the tenancy agreement with the Borough Council. It is therefore proposed to conclude these tenancy agreements as soon as possible, if it is found that a breach has occurred.

3. Options Considered

3.1 The options are as described in Section 2 of this report.

4. Proposal

4.1 It is proposed that the Borough Council ceases to provide an allotment service in the Parish of Silverdale for the reasons described in Section 2 of this report and that the following actions are progressed to regularise the position:-

- (i) That the Park Road site is leased to Silverdale Parish Council for the purpose of meeting it's statutory duty to provide allotment land within the parish.
- (ii) That tenancy agreements with current plot holders on the Park Road site are transferred to Silverdale Parish Council and any outstanding rent due to the borough council is collected. Following this, new tenancy agreements are offered by Silverdale Parish Council at the appropriate time.
- (iii) That actions (i) and (ii) are completed by early in the new year 2014.
- (iv) That Silverdale Parish Council is asked to confirm whether or not it wishes to lease the The Acre site (either in whole or in part) for the purpose of meeting it's statutory duty to provide allotment land within the parish.
- (v) Subject to a positive response to (iv) that the agreed section of The Acre is leased to Silverdale Parish Council (the precise area to be agreed by negotiation in conjunction with the relevant portfolio holder).
- (vi) That tenancy agreements with current plot holders on the agreed section of the site are transferred to Silverdale Parish Council and any outstanding rent due to the borough council is collected. Following this, new tenancy agreements are offered by Silverdale Parish Council and ploholders are relocated within the agreed section as part of a consolidation plan for the site.
- (vii) That alternative plots in the agreed section of the site are offered to plot holders affected by (v) for allotment gardening purposes only.
- (viii) That any remaining section of the site is retained by the Borough Council.

- (ix) That if a negative response to (iv) is received, the Borough Council concludes all tenancy agreements with existing plot holders on The Acre with 12 months notice and any outstanding rent is collected.
- (x) That the Borough Council offers alternative plots to plot holders who are not residents of Silverdale Parish, at other allotment sites in the Borough where capacity exists to do so.
- (xi) That if insufficient capacity exists to accommodate plot holders from The Acre, a further report on the implications is brought to Members.
- (xii) That the decision to temporarily suspend the letting of vacant plots at both Park Road and The Acre, pending transfer of the responsibility of allotment provision in Silverdale to the Parish Council, is noted.
- (xiii) That the tenancy agreements with any ploholders on the Acre who are currently not using the plots for allotment gardening purposes and may therefore be in breach of the tenancy agreements are concluded with immediate effect, if it is found that a breach has occurred.

5. Reasons for Preferred Solution

- 5.1 To regularise the legal position in respect of the provision of allotments in the Parish of Silverdale.

6. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

- 6.1 Creating a cleaner, safer and sustainable Borough.
- 6.2 Creating a healthy and active community.
- 6.3 Becoming a co-operative Council.

7. Legal and Statutory Implications

- 7.1 The legal and statutory implications are detailed in Section 2 of this report. It should also be noted that if plot holders do not vacate plots on expiry of a notice to quit, the borough council would have to apply to the court for an order for possession of the plots and ultimately a warrant.

8. Equality Impact Assessment

- 8.1 No issues.

9. Financial and Resource Implications

- 9.1 When the Borough Council ceases to provide an allotment service at Park Road and The Acre, there will be a modest saving to the General Fund Revenue Programme in relation to utility costs, waste removal and other maintenance and repair costs. At current budget provision levels, it is estimated that this will equate to approximately £6000 per annum.

There will be a corresponding loss of income of approximately £4100 per annum.

There will also be a cost for the consolidation of the Acre site, including relocating current tenants, preparation of alternative plots, site clearance and securing of the remaining land. An estimate of the costs will be prepared for consideration by Members.

- 9.2 There will be a significant requirement of staff resources to manage the transition of the service from the Borough Council to the Parish Council. This will predominantly affect the Community Team in the Operations Service, where responsibility for managing allotments sits, but there will also be a requirement for support from colleagues in the Property and Legal teams. Legal costs may also be incurred in the process for taking possession of plots where tenants do not vacate on expiry of a notice to quit.
- 9.3 If the Borough Council is required to provide a new allotment site to accommodate plot holders who are vacated from The Acre, there will be a requirement for a capital sum (as yet unknown) to lay out a new site and a modest annual revenue provision for its management.
- 9.4 A fully costed plan will be prepared subject to the outcome of consideration of this report by Members.

10. Major Risks

- 10.1 A full risk assessment will be prepared subject to the outcome of consideration of this report by Members.
- 10.2 However, initial risks are as follows:-
- Failure to reach an appropriate agreement with Silverdale Parish Council.
 - Negative reaction from current plot holders.
 - Adverse publicity.
 - Legal challenge and costs.
 - Failure to secure a new site for alternative provision.

11. Key Decision Information

- 11.1 The decision may result in significant initial expenditure for the Council. The decision impacts directly on one Ward (Knutton/Silverdale) and indirectly on other Wards.
- 11.2 It will be included in the Forward Plan.

12. List of Appendices

- 12.1 Appendix 1 – Provision of information relating to both sites to Silverdale Parish Council.

13. Background Papers

- 13.1 Site Plans