

**CABINET
15 SEPTEMBER 2020**

**EXCHANGE OF LAND AT WHESOE ROAD
AND DRINKFIELD MARSH, DARLINGTON**

**Responsible Cabinet Member –
Councillor Charles Johnson, Resources Portfolio
Councillor Alan Marshall, Economy Portfolio**

**Responsible Directors – Paul Wildsmith, Managing Director
Ian Williams, Director of Economic Growth and Neighbourhood Services**

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report is to seek Cabinet approval to exchange 1.14 acres of land held by the Council at Whessoe Road (shown hatched on the plan at **Appendix 1**) for 0.83 acres of land adjacent to Drinkfield Marsh (shown hatched on the plan at **Appendix 2**).

Summary

2. The Council as Highway Authority owns 1.14 acres of land acquired by Durham County Council in the 1970's for highway widening purposes. Highways no longer wish to widen Whessoe Road but just retain sufficient land for a highway verge.
3. Drains were installed in the land but obligatory fencing was not erected along the new boundary. With Highways no longer proposing to use the land for a highway scheme there is an obligation under the Crichel Down Rules to sell the land back to the previous owners at open market value.
4. In and prior to 1997 the Council carried out works, via volunteers, to raise the levels of Drinkfield Marsh and create the designated status of Local Nature Reserve.
5. The current owners are executors of the previous owner who owned both the Whessoe Road land prior to purchase by Durham County Council (DCC) and the land adjacent to Drinkfield Marsh. The current owners have expressed a desire to exchange land in order to regularise the boundaries of both plots and bring all disputes to an end and terms have been provisionally agreed to achieve this.

Recommendations

6. It is recommended that:
- (a) Cabinet approve the exchange of land on the terms set out in this report, and;
 - (b) The Assistant Director Law and Governance be authorised to complete the transfers of land accordingly.

Reasons

7. The recommendations are supported in order to safeguard Drinkfield Marsh Local Nature Reserve.

Paul Wildsmith
Managing Director

Ian Williams
**Director of Economic Growth
 and Neighbourhood Services**

Background Papers

No background papers were used in the preparation of this report

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S17 Crime and Disorder	The report has no implications for crime and disorder
Health and Wellbeing	The report has no implications for health and wellbeing
Carbon Impact and Climate Change	The protection of land adjacent to Drinkfield Marsh has the potential to store carbon in tree and shrub growth.
Diversity	No implications
Wards Affected	Harrowgate Hill
Groups Affected	None
Budget and Policy Framework	The resolutions in this report are not likely to result in changes to the budget framework.
Key Decision	No
Urgent Decision	No
One Darlington: Perfectly Placed	N/A
Efficiency	The workload resulting from the recommendations in this report assumes resources at existing levels.
Impact on Looked After Children and Care Leavers	N/A

MAIN REPORT

Information and Analysis

Whessoe Road

8. In the 1970's Durham County Council as Highway Authority acquired 1.14 acres of land in a strip running along Whessoe Road (shown hatched on the plan at Appendix 1) from Mr Blair for the purposes of widening and draining Whessoe Road. DCC were obliged to erect a fence along the newly created boundary as a condition of purchase. In subsequent years DCC installed a new highway drainage system but didn't fence the land and didn't widen the existing adopted highway. Quotations suggest the cost of a post and rail fence along the boundary would be in the region of £7,000 whereas a secure palisade fence would be in the region of £25,000.
9. In 1997 the land transferred to Darlington Borough Council as the new Highway Authority for the area under the Local Government Review provisions. Highways have now confirmed that they have no intention to widen this part of Whessoe Road and are happy to dispose of the land subject to retention of an appropriate highway verge.
10. Under the Crichel Down Rules, the Council is obliged to offer land acquired under Compulsory Purchase Order back to the original owners at open market value. The land wasn't formally acquired by CPO but with the threat of compulsory purchase in the background and as such should be offered back to the original owner now Mr Blair's executors.
11. In recent years the land has been fly-tipped due to the lack of a fence, partly on the Council's land which has been cleared and partly on the land behind which belongs to the executors of Mr Blair.

Drinkfield Marsh

12. In 1997 Drinkfield Marsh was given Local Nature Reserve status. Prior to this water levels in the marsh were raised, via volunteers and Countryside Section, by the installation of weirs across the outfall stream to create the existing permanent pond. This inundated adjacent land which was also owned by Mr Blair, being part of 630 Whessoe Road which wraps around the Civic Amenity site and borders the marsh.
13. Mr Blair's land was extensively tipped with arisings from housing clearance works in Darlington but was subsequently reworked in 2008 or thereabouts to reclaim scoria blocks which had been tipped but have some value. The land is steeply sloped down to water level but includes an area that is under water and presumed consistent with the bed of the marsh.
14. The flooding of the land and the exact position of the respective boundaries has been the subject of much argument and threats of legal action over the years although no actions have ever been brought forward.
15. Notwithstanding the above Mr Blair's executors have now expressed a desire to sell their landholding in Darlington and have indicated that they are amenable to a

mutually beneficial land exchange which will bring an end to all the previous wrangling over the boundaries of the marsh and inundation of their land.

Proposed Terms

16. In informal discussions Mr Blair's executors have agreed to take the 1.14 acres of the Council's Whessoe Road land, with a payment of £5,000 towards the cost of fencing works that should have been carried out by the Highways Authority but with the purchaser being responsible for clearing any fly-tipping and subject to a covenant not to build over, damage or excavate the highways drains in the land. In return, the Council will take the inundated land at Drinkfield Marsh plus enough land to protect the slope down to the marsh being 0.83 acres and shown hatched on the plan at Appendix 2. Each party to bear its own legal and surveyors costs involved in the exchange.

Valuation Comment

17. It is considered that the value of the Whessoe Road land will be higher than the value of the inundated land at Drinkfield in monetary terms, although with covenants not to build over the highway drains this is not a significant value. However, the opportunity to safeguard the marsh is a windfall opportunity that has significant ecological value.
18. It is further considered that the proposed agreement represents value for money and terms for the sale of the Whessoe Road land represent the best price reasonably obtainable in line with the provisions of S123 of the Local Government Act 1972.

Finance Comment

19. The net cost of £5,000 will be funded from existing resources in the Economic Growth group.

Planning Comment

20. The incorporation of the slope and continuation of the land use within the marsh area would not require planning permission. The undertaking of the work historically to create the slope may have required planning permission as it would have constituted an engineering operation. However, the works were undertaken more than 10 years ago and therefore would be immune from any enforcement action under the Planning Acts.