


Agenda Item No:	6	
Committee:	Overview & Scrutiny Panel	
Date:	2 June 2014	
Report Title:	Lease of New Road Allotments, Whittlesey	

Cover sheet:

1 Purpose / Summary

- At a Cabinet Meeting held on the 24 April 2014, it was decided and agreed by Cabinet to refer the decision to vary the terms of a proposed lease to Whittlesey Town Council (WTC) to the Overview & Scrutiny Panel.
- The matter concerns the proposed lease of the New Road Allotments in Whittlesey, which is currently leased to WTC by FDC.

2 Key issues

- The decision concerns the variation of the proposed terms as previously approved by Cabinet on 28 July 2011.
- The proposed variations include:
 - A request by WTC to receive a 15% share of the net proceeds from any sale of the allotment site;
 - Waiving an outstanding amount of unpaid rent from WTC and repaying an amount that would not have been collected if the original agreement had been granted immediately following the original Cabinet approval, totalling £1,128.12.

3 Recommendations

- It is recommended that the Overview & Scrutiny Panel consider the Cabinet Report dated 24 April 2014, together with the previous Cabinet Report dated 28 July 2011. Both reports are attached.

Wards Affected	Lattersey Ward
Forward Plan Reference	
Portfolio Holder(s)	Councillor Fred Yeulett - Portfolio Holder for Growth Councillor Chris Seaton – Portfolio Holder for Finance
Report Originator(s)	Justin Wingfield – Valuation & Estates Officer
Contact Officer(s)	Gary Garford – Corporate Director Justin Wingfield – Valuation & Estates Officer
Background Paper(s)	Cabinet Report dated 24 April 2014 Cabinet Report dated 28 July 2011

AGENDA ITEM NO. 10

CABINET

Date	24 April 2014
Title	NEW ROAD ALLOTMENTS, WHITTLESEY

1. PURPOSE/SUMMARY

The purpose of this report is to request that Members consider variations to the previously agreed terms of a long lease for the New Road allotments to be granted to Whittlesey Town Council at a peppercorn rent. The lease also provides that if FDC seek to redevelop the site it must relocate the allotments and share a percentage (15%) of the sale proceeds with Whittlesey Town Council, should certain conditions be satisfied.

2. KEY ISSUES

- Members will recall that a report was presented to Cabinet in July 2011, which proposed to grant a Lease of 99 years at peppercorn rent to Whittlesey Town Council (WTC).
- The proposal was agreed by Cabinet and included a requirement for FDC, as an expense of any subsequent sale to a developer, to provide an alternative site with equivalent infrastructure, within the Parish of Whittlesey and will relocate WTC and its subtenants.
- This report seeks to request that Members consider variations to the terms of the original Cabinet Approval which has been proposed by WTC.

3. RECOMMENDATION(S):

It is recommended that:

- Members consider the proposed variation to the terms of the original agreement, involving the payment of a 15% share of the net proceeds from any sale of the allotment site, as tabled by WTC and confirm whether they wish to support the variation;
- Authority to agree the revised terms is delegated to the Corporate Director for Growth and Infrastructure in consultation with the Corporate Director (Finance) to grant a lease to include terms described in the report below;
- Members consider waiving an outstanding amount of unpaid rent from WTC and repaying an amount that would not have been collected if the original agreement had been granted immediately following original Cabinet Approval, totalling £1,128.12.

- Agree the writing off of such a revenue figure in consultation with the Finance Portfolio Holder and the Corporate Director (Finance)

Wards Affected	Lattersey Ward
Forward Plan Reference No.(if applicable)	
Portfolio Holder(s)	Cllr Pop Jolley – Asset Portfolio Holder Cllr Alan Melton – Leader Cllr Michael Humphrey – Finance Portfolio Holder
Report Originator	Justin Wingfield – Valuation and Estates Officer
Contact Officer(s)	Gary Garford – Corporate Director Justin Wingfield – Valuation and Estates Officer
Background Paper(s)	Cabinet Report Dated 28 th July 2011

1 Background/Introduction

- 1.1 The purpose of this Cabinet report is to request that Members consider variations to the terms of a long lease to be granted to Whittlesey Town Council at a peppercorn rent. Details of the original proposal and the Cabinet Report approving the grant of a long Lease (dated 28th July 2011) are attached as background information at Appendix 1.
- 1.2 The outline terms of the Cabinet approval provided that FDC grant a lease to WTC for a term of up to 99 years at a peppercorn rent. The lease also provides that if FDC seek to redevelop the site it must relocate the allotments and the tenant and sub-tenants at its own cost, should certain conditions be satisfied.
- 1.3 Following Cabinet approval, Officers began drafting a new long Lease on the terms as provided for in the approved report and a draft copy was sent to WTC for its approval. The vast majority of the draft lease agreement was agreed by WTC, however they wished to revisit the details of the relocation package to reflect a revised settlement for Whittlesey.

2 Proposal

- 2.1 Members from WTC wish for FDC to reconsider the details of the relocation package - should FDC successfully secure planning permission and subsequently wish to dispose of the site. Thus, in addition to the requirements to relocate the allotments, it is proposed by WTC that it should also receive a share of the net (after relocation and planning fees etc.) sale proceeds.
- 2.2 WTC has requested that an additional clause be included within the proposed lease which requires FDC to pay to WTC 15% of the net sale proceeds. It is suggested that any such proceeds passed onto WTC are expended on regeneration or improvement projects within the town. All other terms as previously agreed to remain the same.
- 2.3 In addition to the proposed variation above, WTC also request that FDC repay an amount of rent (revenue) which would not have been payable, had the original Lease taken effect on the date of the original Cabinet decision (28th July 2011) and further, that FDC waive two unpaid invoices covering the subsequent period between 1st April 2012 and the 31st March 2014. Effectively this would mean that FDC refund £284.62 to WTC and waive rental payments totalling £843.50.
- 2.4 This would require FDC to write off these revenue amounts on the basis that they may have been incorrectly raised due to the pending negotiation with WTC and an extension to the original proposal. However, at the time no agreement had been reached with WTC over the entire agreement which would have included reducing rental levels down to a peppercorn figure so rental charges continued to apply.

3 Risk Assessment

- 3.1 It is acknowledged that FDC are already offering an extremely attractive and generous relocation package to WTC. Members have approved the relocation package and have acknowledged the inherent financial risks associated with the acquisition and re-provision of an alternative site, together with the costs of reinstating equivalent infrastructure and relocating the 'sitting tenants'. Such costs would be mitigated by prudent acquisition of suitable alternative land and careful management of the relocation process.
- 3.2 The provision of a sales proceed sharing arrangement with WTC will further reduce the value of FDC's anticipated capital receipt in difficult financial times for FDC. Therefore the Council must thoroughly scrutinise any such redevelopment proposal to ensure financial viability and that the returns are sufficient to justify bringing the site forward.
- 3.3 The length of the proposed lease is likely to encapsulate a number of cycles of the Core Strategy review process. As FDC are the party wishing to seek an enhanced capital value, the relocation clause will only become relevant when FDC wish to release the value by securing planning permission and seeking disposal, which will be subject to a further Cabinet Decision.
- 3.4 The refund and cancellation of the outstanding rental invoice will reduce FDC's anticipated revenue income by £1,128.12. All future income streams will be reduced to a peppercorn per annum and this has already been approved by virtue of the original Cabinet decision.

4 Conclusions

- 4.1 As previously acknowledged the allotments managed by WTC provide a valuable and well used community facility and it is likely that there would be significant public concern were it to be lost. Such proposals are not entirely uncommon between different tiers of Local Government and such an arrangement would recognise the efforts invested by WTC who continue to provide such excellent facilities.
- 4.2 The proposal to share a percentage of the net sales proceeds is an optional enhancement to an already generous relocation package, which will ensure that allotment provision in Whittlesey is protected for future generations.
- 4.3 FDC are only likely to seek planning permission and disposal if the market conditions are favourable. Property cycles create fluctuations in the viability of development schemes and what may presently be considered unviable may, in ten years' time be extremely possible.

AGENDA ITEM NO. 9	
CABINET	
Date	28 JULY 2011
Title	NEW ROAD ALLOTMENTS, WHITTLESEY

1. PURPOSE/SUMMARY

The purpose of this report is to seek a decision from members to the granting of a long lease to the Whittlesey Town Council at a peppercorn rent with a requirement to relocate the allotments if certain conditions are satisfied.

2. KEY ISSUES

- FDC leases 6.5 acres of land at New Road, Whittlesey to Whittlesey Town Council, who have been in occupation of the land since 1981, paying an annual rent of £421.75.
- The Town Council has invested almost £30,000 in the last 2 years improving the facilities for the allotment holders. FDC recently contributed £700 towards the cost of improving the water supply to the site.
- The allotments are thriving and provide a useful community facility; presently occupancy is at 100% and there is a growing waiting list for plots.
- The land was originally acquired under Housing Act powers and is not Statutory Allotment Land and as such, does not require the Secretary of State’s approval for disposal.
- The site is adjacent to the Development Area Boundary for Whittlesey and it is considered possible that the emerging Local Development Framework may incorporate the site into the Development Area Boundary.
- WTC would like to improve the terms of their interest through the grant of a long lease.
- Officers recognise the need to retain the site to realise an enhanced future capital value and favour the grant of a long lease.
- The Heads of Terms agreed with WTC propose the grant of a 99 year lease at a peppercorn rent.
- The terms also provide that if the site is granted Planning Consent for Development, FDC, as an expense of any subsequent sale to a developer, will provide an alternative site with equivalent infrastructure, no larger than the existing site, within the Parish of Whittlesey and will relocate WTC and its subtenants.
- If planning permission for development were successfully obtained, at today’s values FDC could expect a capital receipt in the region of £1.0m to £1.25m. From this receipt approximately £150,000 would need to be apportioned towards the relocation costs.
- The grant of an interest in the property for nominal consideration would be a transaction at “under value” requiring Council approval. Council’s have delegated powers from the Secretary of State to approve such transactions where the “value forgone” is less than £2m on any single transaction.

3. RECOMMENDATION(S):

It is recommended that:

- A lease of up to 99 years is granted to the Town Council for a peppercorn rent, subject to the conditions described in the report below.
- Authority to agree the detailed terms is delegated to the Corporate Director of Business Infrastructure and Development in consultation with the Corporate Director (Finance) and the Corporate Director of Central Services to grant a lease to include terms described in the report below.

Wards Affected	Lattersey Ward
Forward Plan Reference No.(if applicable)	
Portfolio Holder(s)	Cllr Cotterell – Special Projects(Assets) Cllr Melton – Leader and Finance
Report Originator	Justin Wingfield – Valuation and Estates Officer
Contact Officer(s)	Gary Garford – Corporate Director Justin Wingfield – Valuation and Estates Officer
Background Paper(s)	None

1.0 Background/Introduction

- 1.1 Fenland District Council (FDC) owns 6.5 acres of land on New Road in Whittlesey. The site is currently laid out as allotment gardens and is shown edged red on the attached plan.
- 1.2 Whittlesey Town Council (WTC) occupies the site by virtue of a head-lease from FDC which they have done since November 1981. The lease continues from year to year, however either party can determine the lease by service of 12 months prior written notice. The current annual rent of the land is £421.75.
- 1.3 Under the terms of the lease WTC are able to sublease individual allotments to local residents on lesser tenancies. As a result of proactive management, WTC have secured occupancy level of 100%. There is also a growing waiting list of prospective tenants.
- 1.4 In the last 2 years WTC has invested over £30,000 improving and refurbishing the allotment site. Improvements include the provision of resurfaced roadways, boundary fencing and an enhanced water supply.
- 1.5 In August 2010 WTC approached FDC to request some financial assistance regarding the site. FDC agreed to contribute £700 towards the costs of improving the water supply. WTC now wish to explore the option of either purchasing the freehold of the site or taking a long lease at a peppercorn rent. Such an option would enable WTC to secure the longer term use of the site for community use, whilst safeguarding the financial investment they have already made.
- 1.6 The site is situated to adjacent to the Development Area Boundary. Being in such close proximity to the existing boundary, there is a possibility that this site may be incorporated within the Development Area Boundary through the emerging or future Local Development Framework review.
- 1.7 Although the land is presently used for allotment purposes, the land was acquired under Housing Act powers and is not Statutory Allotment Land and further, does not require the Secretary of State's approval for disposal.
- 1.8 For the reasons stated above there is a strong possibility that this site could have a significantly enhanced capital value, assuming favourable allocation within the LDF.

2.0 Public Interest

- 2.1 Before deciding whether to deal with this report as an exempt item and to exclude the press and public the Cabinet must first decide whether there is exempt information in the report and secondly whether the public interest should override the application of that exemption.
- 2.2 This report contains details of a potential commercial land transaction with associated financial matters. The information falls within category 3 of the amended Schedule 12A namely "Information relating to the financial or business affairs of any particular person (including the authority holding that information)." Members will need to decide whether the sensitivity of this information relating to this proposal is so great that the public interest in transparent and

accountable decision making is outweighed at this time. Members could decide that disclosing detailed information into the public domain at this stage will be detrimental to the Council.

3.0 Proposal

- 3.1 In September 2010 a meeting was held between FDC & WTC, where it was indicated that WTC would like to improve the terms of their interest, by either acquiring the freehold or obtaining the grant of a long lease. FDC officers recognised the need to retain the site to secure enhanced capital values and indicated that FDC would favour the grant of a long lease. A freehold sale and clawback agreement would increase both risk and potential for ambiguity.
- 3.2 Heads of Terms have been agreed by WTC which propose the grant of a 99 year lease at a peppercorn rent. In addition to the grant of a long lease and to protect the allotment provision in Whittlesey, terms include that if the site is granted Planning Consent for Development, as an expense of any subsequent sale to a developer, FDC will provide an alternative similar sized site with equivalent infrastructure, within the Parish of Whittlesey and relocate WTC and its subtenants.
- 3.3 Although the passing rent is a relatively modest sum and the value forgone by granting a peppercorn rental is minimal, the grant of an interest in the property for nominal consideration would be a transaction at “under value” requiring Council approval. Council’s have delegated powers from the Secretary of State to approve such transactions where the “value forgone” is less than £2m on any single transaction.
- 3.4 Should the site secure a favourable LDF allocation and if planning permission for development is successfully obtained, at today’s values FDC could expect a capital receipt in the region of £1.0m to £1.25m. From this receipt FDC would have to apportion approximately £150,000 towards the relocation of WTC and its subtenants.
- 3.5 All remaining terms of the lease would be substantially the same and would not vary any existing arrangements.

4.0 Options

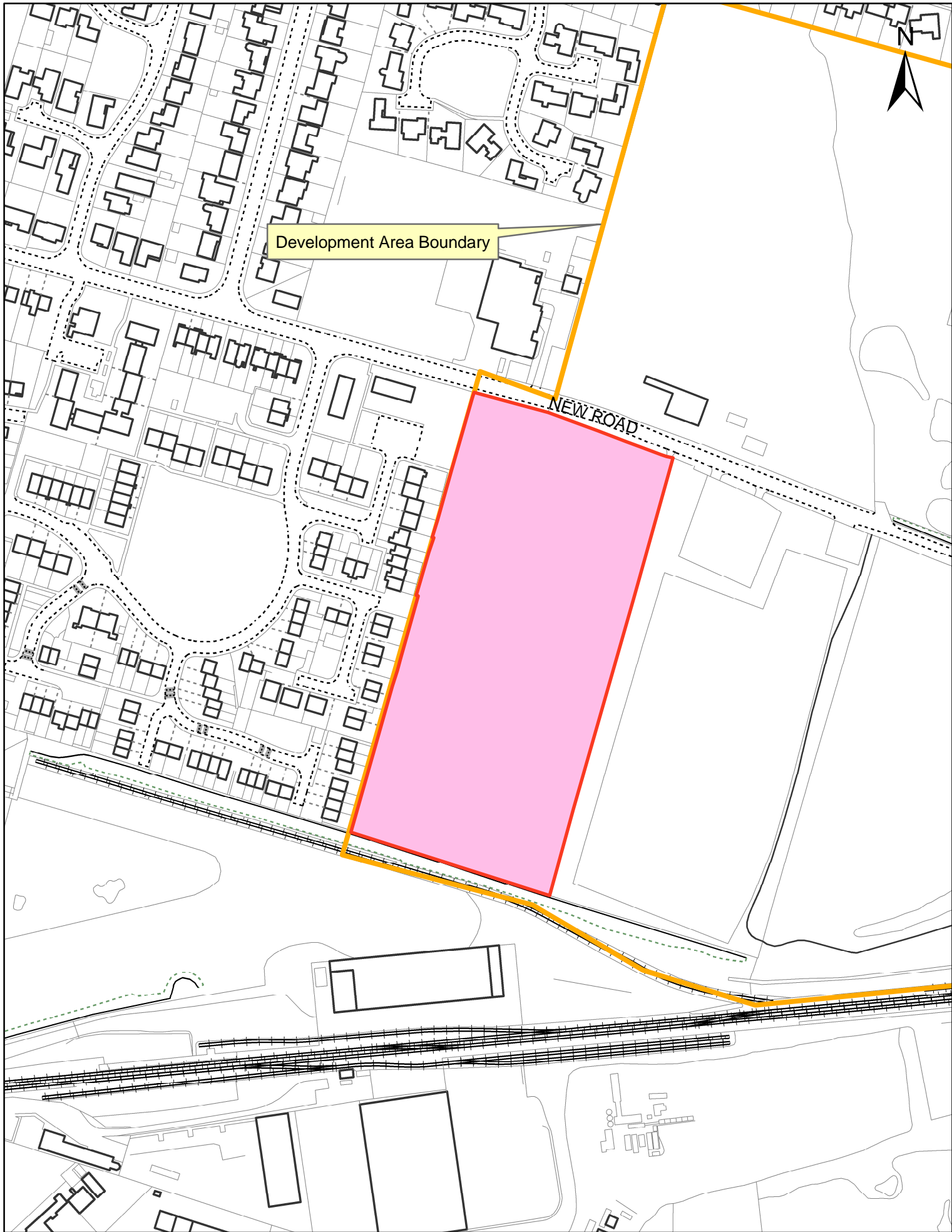
- 4.1 The following options have been considered:
- 4.2 **Option 1:** retain the status quo and continue with current leasing arrangements. There are no strong arguments for or against this option, however WTC are keen to continue to maintain the present quality and standard of the site. Without additional security of occupation, WTC may be more reluctant to continue with their ongoing investment and proactive management of the site.
- 4.3 **Option 2:** grant a 99 year lease to WTC at a peppercorn rent. The terms of the lease would require that if Planning Permission for development is secured, FDC, as an expense of any subsequent disposal to a developer will provide an alternative site, (with equivalent infrastructure), no larger than the existing site within the Parish of Whittlesey and relocate WTC and its subtenants.

5.0 Risk Assessment

- 5.1 **Option 1:** retaining the status quo presents no additional risks to FDC.
- 5.2 **Option 2:** assuming a favourable allocation in the emerging or future LDF process and securing planning permission for development, there are financial risks associated with the acquisition of an alternative site within the Parish of Whittlesey at a reasonable cost, together with the costs of reinstating equivalent infrastructure. Such costs can be mitigated by prudent acquisition of suitable alternative land and careful management of the relocation process.
- 5.3 The length of the proposed lease is likely to encapsulate a number of cycles of the LDF review process. As FDC are the party wishing to seek an enhanced capital value, the relocation clause will only become relevant when FDC wish to release the value by securing planning permission and seeking disposal, which will be subject to a further Cabinet Decision.

6.0 Conclusions

- 6.1 The allotments managed by Whittlesey Town Council provide a valuable community service and it is likely that there would be public concern were it to be lost.
- 6.2 It is likely that the objectives of both Town & District Councils would best be achieved through the grant of a long lease of sufficient length to justify the capital outlay by WTC. Such length of lease may also enable WTC to explore additional funding opportunities.
- 6.3 FDC are only likely to seek planning permission and disposal if the market conditions are favourable. Property cycles create fluctuations in the viability of development schemes and what may presently be considered unviable may, in ten years time be extremely possible.
- 6.4 The grant of a lease for a nominal sum constitutes a disposal at less than market value. FDC has delegated powers to approve a disposal without the specific approval of the Secretary of State at less than full value where the value where the value forgone is less than £2m.



0 510 20 30 40 50
Meters

**Land at New Road
Whittlesey, Cambridgeshire**

Scale = 1:2,500

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Date: - 28.04.11

Ref:- JLW



Cabinet Minutes

Date: Thursday 28 July 2011

Time: 2.00pm

Place: COUNCIL CHAMBER, FENLAND HALL

Please note: all Minutes are subject to approval at the next Meeting

Attendance Details

Present:

Councillor A K Melton, Chairman; Councillors T R Butcher, J F Clark, M F J Cotterell, Mrs J French, S Garratt, P Murphy, D C Oliver, C C Owen and C J Seaton

Support officers:

Councillors Cornwell, Keane and Jolley attended the meeting, at the invitation of the Chairman, as observers.

Item Number	Item/Description
25/11	<p style="text-align: center;">WHITTLESEY ALLOTMENTS</p> <p style="text-align: center;">Report - 11 pages (977K/bytes)</p> <p>Members considered the granting of a long lease for the allotments at New Road, Whittlesey to Whittlesey Town Council at a peppercorn rent, with a requirement to relocate the allotments if certain conditions are satisfied. Members were informed:</p> <ul style="list-style-type: none">• that the allotments are thriving and provide a useful community facility;• of the background to the proposal for a long-term lease;• of the options, together with risks, available to the Council. <p style="text-align: center;">Decided that:</p> <ol style="list-style-type: none">1. a lease of up to 99 years is granted to Whittlesey Town Council for a peppercorn rent, subject to the conditions described in the report;2. authority be delegated to the Corporate Director (Business Infrastructure and Development) in consultation with the Corporate Director (Finance) to grant a lease to include terms described in the report. <p><i>(Councillors Butcher and Garratt declared their respective personal and prejudicial interest in this item, by virtue of being members of Whittlesey Town Council, and retired from the meeting for the duration of the discussion and voting thereon)</i></p> <p><i>(Members resolved to exclude the public from the meeting for this item of business on the grounds that it involved the disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972)</i></p>