

**PURCHASE NOTICE: LAND AT MEADOWCROFT HAGLEY**

Relevant Portfolio Holder	Cllr Kit Taylor
Portfolio Holder Consulted	Yes
Relevant Head of Service	Ruth Bamford
Wards Affected	<b>Hagley</b>
Ward Councillor Consulted	Yes
Non-Key Decision	

**1. SUMMARY OF PROPOSALS**

- 1.1 Members are asked to consider the Purchase Notice which has been served on the Council by owners of a plot of land adjacent to number 73 Meadowcroft, Hagley. The notice requires a response from the Council under section 137 of the Town and Country Planning Act 1990.

**2. RECOMMENDATIONS**

- 2.1 That the Head of Planning and Regeneration be authorised to serve a Response Notice on the Owners confirming that the Council is not willing to comply with the Purchase Notice for the reasons stated in this report and as she may determine, and send a copy of the Response Notice to the Secretary of State.
- 2.2 That delegated authority be granted to the Head of Planning and Regeneration and the Head of Legal, Equalities and Democratic Services to take any further necessary steps to progress this matter, including arranging for the Council to be represented at any subsequent inquiry.

**3. KEY ISSUES**

**Financial Implications**

- 3.1 If the Council accepts the Purchase Notice the Council will have to purchase the Land and the Owners are entitled to ask for compensation for the loss of the Land. No information as to value has been supplied by the Owners. Officers did consider whether a valuation should be obtained. However, in light of the conclusion reached that the appropriate response would be to reject the notice as set out at 3.20, this was not pursued. In the event that Members take a different view then before considering accepting the notice it would be necessary to obtain a valuation of the land and to give

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consideration to the budget implications, namely that the Council has no monies allocated within its approved capital programme for the purchase of the Land.

- 3.2 If the Council rejects the Notice it will be referred along with the Council's response to the Secretary of State. Legal costs would be incurred in defending the Council's position at any Inquiry. The matter would be dealt with in a manner similar to a planning appeal.

### **Legal Implications**

- 3.3 The relevant legislation is section 137 of the Town and Country Planning Act 1990. Guidance for local authorities in relation to Purchase Notices is set out in Planning Circular 13/83.
- 3.4 Given the nature of the subject matter for this report, the legal implications are set out in the main body of the report at 3.5 onwards.

### **Service / Operational Implications**

#### **Legislative framework**

- 3.5 A Purchase Notice dated 18th February 2014 was served in respect of land adjacent to number 73 Meadow Croft, Hagley DY9 0LJ ("the Land) on the Council as the Local Planning Authority . The owners of the land who served the notice are Mr James Patrick Martin Flynn and Mr Charles Anthony Windsor Aston (referred to in this report as the Owners) under Section 137 of the Town and Country Planning Act 1990. A copy of the Purchase Notice is attached to this report (Appendix 1) together with a copy of a plan showing the extent of the Land to which the notice applies (Appendix 2).
- 3.6 A Purchase Notice is a mechanism whereby any landowner who believes their land has become incapable of reasonably beneficial use by virtue of a planning decision may seek to have the land acquired by the Local Planning Authority and be paid compensation due to the loss of the use of the land.
- 3.7 This process is not intended to provide a universal remedy where planning permission is refused. It should only be used in cases where the land has become incapable of reasonably beneficial use in its existing state and no development can be carried out to make its use reasonably beneficial.

- 3.8 The Council has a period of 3 months within which to respond to the Notice. The Council can:
- (i) Accept the Purchase Notice and acquire the Land; or
  - (ii) Confirm that another local authority or statutory undertaking has agreed to comply with the Purchase Notice in its place; or
  - (iii) Reject the Purchase Notice and refer it and the Council's response to the Secretary of State.
- 3.9 If the Purchase Notice is rejected a response notice has to be served on the land owner within the three month period. The response notice must set out the reasons why it has been rejected. If the Purchase Notice is rejected the matter may be determined by the Secretary of State. The Secretary of State may:
- (i) Refuse the Purchase Notice;
  - (ii) Confirm the Purchase Notice in whole or in part;
  - (iii) Grant the planning permission, the refusal of which gave rise to the Purchase Notice;
  - (iv) Direct that planning permission is granted for some other purpose; or
  - (v) Substitute another local authority or statutory undertaker, having regard to the ultimate use of the Land.

**The site and relevant planning history**

- 3.10 The Purchase Notice relates to land adjacent 73 Meadow Croft, Hagley. The Land consists of approximately 331 square metres. The land is accessed from a short section of private road at the very end of Meadowcroft itself. The land has three boundaries, to the north with the side of the gardens of number 49 Meadowcroft and part of 45 Meadowcroft, to the south by the sides of the gardens of numbers 51 and 73 Meadowcroft and to the east with the access road. Currently the Land consists of an open grassed area with some conifers growing on it. There is a significant difference in levels (some 1.5 metres) between the Land and the adjoining property at 49 Meadowcroft.
- 3.11 In February 1994 a company ("Whiteline") associated with the Owners submitted a planning application (Ref. 94/0117) for residential development on the former Cross Keys Public House site (which included the Land). The planning application was approved for 18 dwellings subject to conditions in July 1994. A copy of the permission is attached at Appendix 3. The approved plans for the site made provision the Land to be laid out as public open space, and at the time the application was approved this was judged to be necessary in

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terms of providing the required amenity space for a development of this scale.

- 3.12 In January 2003 an outline planning application (Ref. B/2002/1372) submitted by Whiteline to develop the Land by the erection of a two bedroomed detached bungalow was refused (Appendix 4).
- 3.13 An appeal against this decision (Ref. APP/P1805/A/03/1117127) was dismissed on 26th August 2003 (Appendix 5).
- 3.14 Land Registry records indicate that the Owners registered title to the Land on 25th August 2005.
- 3.15 A subsequent planning application (Ref. 13/0837) was submitted on 29th October 2013. The description stated that the application was for the erection of a 3 bedroomed detached house with parking. This application was refused on 10th February 2014 and a copy of the Planning Decision Notice is attached at Appendix 6.
- 3.16 The Owners have served the Purchase Notice claiming that:
- (a) the Land has become incapable of reasonably beneficial use in its existing state; and
  - (b) it cannot be rendered capable of reasonably beneficial use by carrying out of the development; and
  - (c) it cannot be rendered capable of reasonably beneficial use by carrying out of any other development for which permission has been granted or is deemed to be granted or for which the local planning authority or the Secretary of State have undertaken to grant permission.

The owners have subsequently confirmed that ground (b) was included by error on their part and is to be disregarded.

- 3.17 Officers are of the view that the Land is not suitable for a separate residential dwelling as such a development would represent an incongruous and cramped form of development which would have an adverse impact on the character, appearance and visual amenities of the area. Further, any such development would result in detriment to and loss of residential amenity to occupiers of nearby properties. In particular due to the difference in levels, number 49 Meadowcroft would be adversely affected by development on the Land. Finally, the use of the Land for residential purposes would severely detract from its original intended purpose of providing amenity space for Meadowcroft.

- 3.18 The land not being suitable for residential use, officers have given consideration to what it could be used for and formed the view that it could be used in association with existing residential dwellings such as an extension to the existing rear gardens. Alternatively, it could be used for domestic garages; this would not involve any element of overlooking and be less intrusive than a dwelling. Other possible uses would include use as a large single allotment or a number of smaller allotments, or finally that the land be used as a communal private open space. This could be achieved by the local residents jointly raising funds to purchase the land and then using it for the benefit of the community.
- 3.19 The Council's Parks and Green Spaces Officer has been consulted and has advised that the Land could not be cost effectively integrated into the Council's Public Open Space portfolio.

**Conclusion**

- 3.20 The onus is on the owner to show that the land is "incapable of reasonably beneficial use". The application in this instance has been made swiftly following the rejection of planning application 13/0837. The owner has provided no supplementary evidence to show other steps that have been taken to try and dispose of the land. For example, whether the owners of the adjoining properties have been approached.
- 3.20 Having carried out a thorough review of the background to this case and the relevant legislation, officers are of the view that the Purchase Notice should be rejected. The grounds upon which the purchase notice is recommended to be rejected are:-
- a. The Owners have not demonstrated that the land is incapable of reasonable beneficial use.
  - b. There is no evidence of any attempt by the Owners to sell or dispose of the land to other third parties.
  - c. The land is capable of reasonable beneficial use as extensions to the garden areas of the adjacent properties, domestic garages, allotment (s) or communal private open space.

**Customer / Equalities and Diversity Implications**

- 3.21 The Council is responding to the notice served by the Owners in accordance with the prescribed legislation and guidance. There is no provision requiring the Council to consult with nearby residents.

**4. RISK MANAGEMENT**

- 4.1 The risk that the Council fails to respond to the Notice in time is being managed by the preparation of an urgent report and if needed the calling of an urgent meeting of Cabinet to make a decision.
- 4.2 There is a risk that the Council may incur legal costs defending its position at any subsequent appeal. This is being mitigated by the preparation of a thorough report with detailed reasons for refusal which will be included in any Refusal Notice.

**5. APPENDICES**

Appendix 1 – Purchase Notice  
Appendix 2 - Plan  
Appendix 3 – Planning permission ref 94/0117  
Appendix 4 – Planning refusal ref B/2002/1372  
Appendix 5 – Appeal decision ref APP/P1805/A/03/1117127  
Appendix 6 – Planning refusal ref 13/0837

**6. BACKGROUND PAPERS**

Included as appendices.

**7. KEY**

N/A

**AUTHOR(S) OF REPORT**

Name: Nina Chana - Planning Officer  
E Mail: n.chana@bromsgroveandredditch.gov.uk  
Tel: 01527 548241

Name: Sarah Sellers – Principal Solicitor  
E Mail: s.sellers@bromsgroveandredditch.gov.uk  
Tel: 01527 881397