

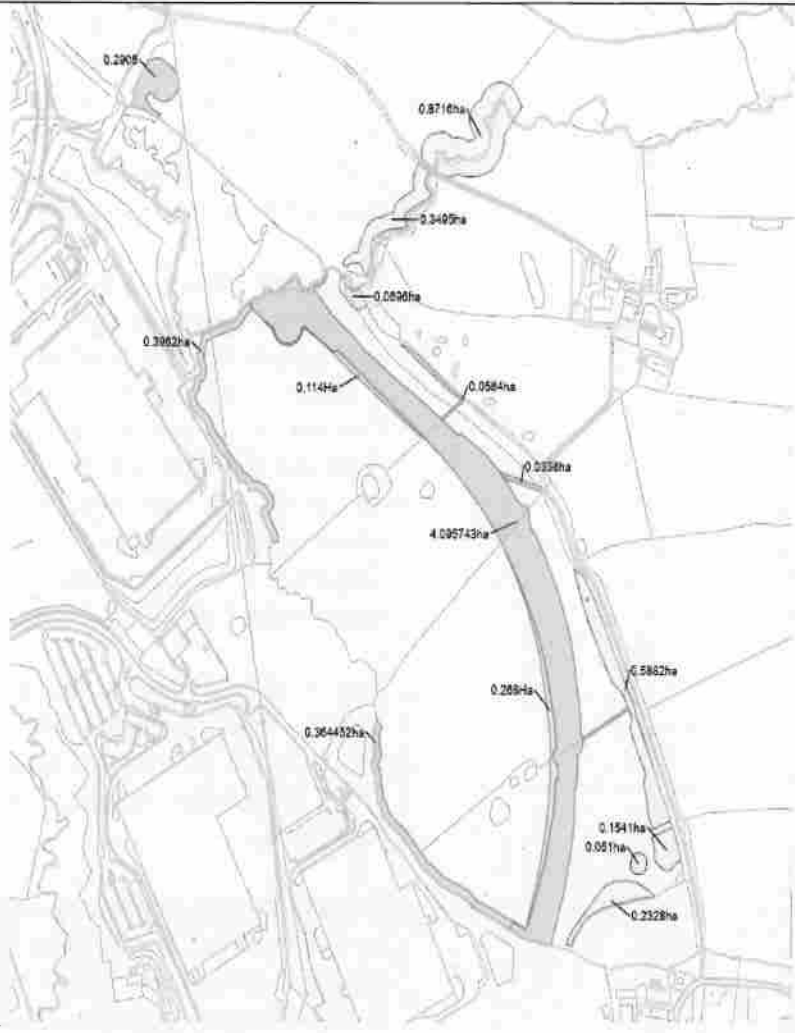
OFFICER DECISION RECORD (ODR2)

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Statutory Blight claim in connection with the Middlewich Eastern Bypass

Date of Decision	27 August 2024
Decision Taker (including Job Title)	<p>Janet Witkowski, Deputy Monitoring Officer <i>Julie Gregory</i> In consultation with</p> <p>(a) Cllr Dawn Clark, Finance Sub-Committee Chair</p> <p>(b) Rob Polkinghorne, Chief Executive</p>
Specific Delegation	<p>This record relates to an officer decision taken pursuant to:</p> <p>Item 39 of the Highways and Transport Committee Resolution dated 9 December 2021 - Middlewich Eastern Bypass - To Authorise the Making of a Compulsory Purchase Order, Side Roads Order and Bridge Scheme for the Delivery of the Middlewich Eastern Bypass Scheme.</p> <p>Recommendation 7 notifies of the Statutory Blight regime that requires the Council to respond to Statutory Blight Notices. Recommendation 10(viii) authorises the Director of Governance to “delegate authority to the Monitoring Officer in consultation with the Finance Sub-Committee Chair and the Executive Director (Corporate Services) (as necessary) to agree appropriate terms in accordance with statutory provisions.”</p> <p>Please note that:- Due to the fact that the Executive Director of Corporate Services post is vacant it is necessary for this decision to be cascaded upwards to the Chief Executive.</p>

<p>Brief Description of Decision</p>	<p>In response to a statutory blight notice and in consideration of the relevant statutory criteria, to seek approval from the Monitoring Officer to</p> <ul style="list-style-type: none"> - invite the Claimant (via his agent) to withdraw the statutory blight notice (the Notice) by way of a letter indicating that there is a preclusion to the approach that has been taken by the Claimant, as contained in Section 150(3), on the basis that it does not meet the legal criteria. This would not preclude a new notice being served. The letter should be sent no later than 6 September 2024; - provide for a response period from the Claimant of no later than 20 September 2024; - prepare the evidence base for a Counter-Notice during this period; - In the event that the Claimant declines to withdraw the Notice or fails to respond within this period, to draft a Counter-Notice utilising the appropriate grounds contained within Section 151(4)(g) and, in the alternative to the nullity argument, under Section 151(4)(c); and - serve any such Counter-Notice pursuant to the Notice on the Claimant, via his agent, by no later than 27 September 2024.
<p>Reasons for the Decision and alternatives considered</p>	<p>The Council requires land owned by X (the Claimant) for the delivery of the Middlewich Eastern Bypass (the Scheme). This land is agricultural land largely allocated for employment uses under Strategic Local Plan Site 44 (Midpoint 18) and land allocated as Open Countryside. The land required for the Scheme is summarised as follows:</p> <ul style="list-style-type: none"> • Land required for the carriageway and drainage infrastructure. This extends to approximately 11.74 acres (4.75 hectares) as shown shaded pink on the plan below. • Land required for ecology mitigation works. This land extends to approximately 5.91 acres (2.39 hectares) as show shaded yellow on the plan below. • Land required for new rights, relating to access and ecological mitigation works. This land extends to approximately 0.99 acres (0.40 hectares) as shown shaded blue on the plan below.



Compensation

The Council has entered into a conditional agreement with the Claimant to acquire the land outlined above (shaded pink, yellow and pale blue). The contract is conditional upon the Council receiving the Department for Transport grant funding for the Scheme. It should be noted that the longstop date within the contract has expired, but the parties have agreed to extend the agreement by 18 months to enable the Council to pursue the Final Business Case approval for the Scheme. Negotiations to extend the longstop date have proved successful,

Statutory Blight Notice

Statutory Process

On 29 July 2024, the Claimant submitted a statutory blight notice to the Council (**the Notice**) pursuant to

Section 150 of the Town and Country Planning Act 1990 (as amended) (**the Act**). Members in Committee have previously been advised of the statutory requirements in relation to statutory blight, on the receipt of a notice, as part of the above-mentioned report to as to the Highways and Transport Committee.

The Council has a 2-month period from the date of the Notice to respond to it, either by accepting the Notice and acquiring the land described therein, or by issuing a Counter-Notice pursuant to Section 151 of the Act. Failure to respond within a 2-month period would obligate the Council to acquire the land and so proper consideration of the Notice and the appropriate response is imperative. The date for response to the Claimant, taking into account weekends, is **27 September 2024**.

The Claimant does have the ability to withdraw the Notice in accordance with Section 156 of the Act and the Council bears no responsibility for the Claimant's costs in relation to the Notice, or its withdrawal, if this happens.

If the Notice is accepted, this results in a deemed Notice to Treat, which then gives the Council and the Claimant a period of 3 years within which to agree compensation in accordance with the Compensation Code (the same set of principles that apply with acquisition using compulsory purchase powers), though it can be agreed quicker than this and on terms as negotiated. If compensation cannot be agreed, either party has the ability to refer the matter to the Upper Tribunal (Lands Chamber) for determination of the award of compensation. If compensation had not been agreed within the 3-year period and no reference to the Tribunal was made within that time, the deemed Notice to Treat would fall away, along with the requirement to purchase the land.

If the Council serves a Counter-Notice, the Claimant can either accept that Counter-Notice, which has the effect of nullifying the Notice, or he can make a reference to the Upper Tribunal (Lands Chamber) for them to determine the question of whether the Notice or the Counter-Notice stands. If the Notice stands, the procedure is as set out above and a deemed Notice to Treat occurs. If the Counter-Notice stands then, depending on the grounds of objection in the Counter-Notice, the Notice may fall away entirely or be restricted

to the acquisition of specific land. The Tribunal does not consider the award of compensation, just the legal standing in relation to statutory blight.

Statutory Criteria

There is a prescribed form of statutory blight notice, but this has not been used for the Notice in this case. This is not preclusive to the Notice being adequate, but it may result in key information being omitted from the Notice.

Land is blighted if it falls within the description of any of the paragraphs contained within Schedule 13 to the Act. An interest in blighted land qualifies for protection if it is a qualifying interest. A qualifying interest for the purpose of this Notice is in an agricultural unit (of part thereof), which is the interest of an owner-occupier. An owner-occupier requires that the same party both owns either a freehold interest in the agricultural unit or a lease with at least 3 years unexpired, and is in occupation of land at the date when the Notice is served.

If the land is blighted land and there is a qualifying interest, then criteria in Section 150(1)(a) of the Act has been satisfied. Section 150(1)(b) and (c) must also be satisfied, which require (respectively) that:

(b) reasonable endeavours to sell the interest in the land have been made OR that compulsory purchase powers remain exercisable; and

(c) due to the land being blighted as a result of the scheme, the claimant has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if the land wasn't blighted.

Although only part of the interest in land within the agricultural unit may be blighted, if a blight notice is successful, the Council would be required to acquire the entirety of the interest (i.e., not just the blighted element, but the entire interest). Section 150(3) requires that a notice cannot be made in relation to part of land if the Claimant has an interest in the whole.

Assessment of Notice

The Council's appointed external lawyers, have prepared a **Statutory Blight Report**, This goes through

	<p>the statutory requirements and assesses them against the Notice.</p> <p>Decision and Reasoning</p> <p>The Council is required to follow the correct statutory procedure and so acceptance of the Notice is not an option. Noting the issues within the Notice, legal advice given to the Council recommends:</p> <p>Inviting the withdrawal of the Notice by way of a letter that indicates that there is a preclusion to the approach that has been taken by the Claimant, as contained in Section 150(3).</p> <p>Timing</p> <ul style="list-style-type: none"> • Invite withdrawal of the Notice by way of a letter sent no later than 6 September 2024 • Provide a response period of no later than 20 September 2024 • Prepare the evidence base for a Counter-Notice during this period • If the Claimant refuses to withdraw or fails to respond within this period, draft a Counter-Notice and serve by no later than 27 September 2024 • If the Claimant withdraws, any future Notice would be the subject of a new response period and a separate ODR at the relevant time.
Member consultation and interests declared	Members have been kept up-to-date of the Scheme.
Significant Decision	YES- it involves savings/expenditure in excess of £1M
Legal Implications	<p>The Notice has been considered by the Council's appointed specialist external lawyers, TLT LLP, who have been advising the Council in relation to the statutory order procedure for the Scheme. TLT prepared the Statutory Blight Report</p> <p>On the basis of the specialist legal advice received, the preferred approach (inviting the Claimant's withdrawal of the Notice by letter to advise, <i>inter alia</i>, that the Claimant has not adhered to the criteria as set out in s150(3)).</p>

	<p>Further, it is important to emphasise to the Claimant that he should take independent legal advice and further, that withdrawal of the blight Notice does not preclude the Claimant from submitting a further notice, but it would mean that the costs incurred in relation to the current Notice cannot be recovered by the Claimant.</p> <p>The letter should make it clear that if not withdrawn, or if withdrawn and resubmitted, the Council has a duty to adhere to the statutory criteria and is required to consider the applicability of the s151 grounds, with no assurance being given as to what the Council's decision will be.</p> <p><i>Louise Carrington, Solicitor (Commercial Property), 13th August 2024</i></p>
<p>Financial Implications</p>	<p>The Council has entered into a conditional agreement with the Claimant to acquire the land outlined above, . The contract is conditional upon the Council receiving the Department for Transport grant funding for the Scheme. If the scheme proceeds then the cost of the land will fall within the budget within the revised business case for the scheme.</p> <p>In the event that the scheme does not proceed there remains a financial risk to the Council from a successful Blight Notice for land no longer required</p> <p><i>Helen Donald, Principal Accountant 12th August 2024</i></p>
<p>Confidential/Exempt Information</p>	<p>No</p>
<p>Background Papers</p>	<p>None</p>

Signed 


Janet Witkowski, Deputy Monitoring Officer

Sally Gregory

Dated 27/08/24

In consultation with

(a) Cllr Dawn Clark, Chair of the Finance Sub-Committee

Signed..........

Dated 21-8-2024
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(b) Rob Polkinghorne, Chief Executive

Signed..........

Dated 22/08/24
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