

BRIEFING REPORT

Portfolio Holder Briefing

Date of Meeting: 05th October 2018

Report Title: Access to land on Longridge – Covenant Review

Portfolio Holder: Cllr Arnold - Portfolio Holder for Planning, Housing and Regeneration

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1. Introduction

- 1.1 On the 10th October 2017, Cabinet considered a report exploring the potential for enabling access to a development site at Longridge, Knutsford known as LPS 38 in the Local Plan. The report set out options and issues in respect of a thin strip of land subject to a covenant (referred to as the Green Land) and the disposal of a strip of land to enable access across other land (referred to as the Blue Land). These lands are shown edged green and blue respectively on the attached plan at Appendix 1. The strip of land crossing the Blue Land is indicated by a blue dashed line on the same plan.
- 1.2 The Cabinet decision directed officers to further explore options for facilitating access to the development site over the covenanted Green Land. This work has been undertaken as directed by Cabinet and in order to inform the Portfolio Holder's decision-making process relating to the proposed disposal of public open space, also contained within the Cabinet decision.
- 1.3 This briefing report considers the options for accessing the site across the Green Land. The recommendation relating to the proposed disposal of public open space is contained in a separate Portfolio Holder decision report. This briefing note is an appendix to that report and is provided to inform the decision maker with regard to the effect of the covenants registered against the title for the Green Land.

2. Background

- 2.1 The Developers land holdings are shown edged red and the development site (LPS 38) is shown pecked in black on the attached plan at Appendix 1.
- 2.2 The Blue Land (shown edged blue on the plan at Appendix 1) is adopted public open space but has no covenant in place restricting its use. The proposed access way across this land to the development site is indicatively shown as a dashed blue line on the attached plan.

- 2.3 The Green Land (shown edged green on the plan at Appendix 1) is public open space that is subject to a covenant restricting its use for this purpose. It is this land that is the subject of this briefing report.

3. Briefing Information

- 3.1 Prior to considering the proposed use of the Green and Blue Land, it was important to explore whether there are any other potential accesses to the development site. This was considered prior to the drafting of the Cabinet report and following the Cabinet decision further work re-confirmed that there are no other feasible alternatives to crossing onto LPS 38. In summary the issues are;
- 3.1.1 To the North the same covenant that affects the Green Land prevents access onto Longridge, and there are unknown ownerships and ownerships outside of the control of the Council. There is also a requirement to cross a watercourse.
- 3.1.2 To the North and East there is a narrow access road. To widen this to an appropriate standard would not be practical.
- 3.1.3 To the South and East there is no practical access.
- 3.1.4 To the South there is a water body (Booths Mere).
- 3.1.5 These lands are part of the Green Belt which is similar to the Blue Land.
- 3.2 Work undertaken prior to the Cabinet decision also highlighted that using the Green Land as a principal means of access was not possible. However Cabinet resolved (as set out in 1.2. above) that further work should be undertaken on this. As such, a review of the covenant affecting the Green Land was then carried out by external legal and Counsel advisors. This work was commissioned through the legal services team following the Council's normal processes.
- 3.3 This work examined whether access across the Green Land was feasible given the restriction on the use of the Green Land. This exercise concluded that crossing the Green Land for this purpose is not feasible as the covenant restricting the use of the Green Land is enforceable such that there is no realistic chance of achieving a principal means of access across this land. In summary the issues with gaining access over the Green Land are;
- 3.3.1 The covenant in question is recent, the original contracting parties exist and the Council as a land owner has no powers to compel those that may have an interest in the covenant to come to an agreement. Knutsford Town Council has suggested that there could be in the region of over 100 potentially interested parties benefitting from the covenant. However the extent of the benefitting land is not identified by

reference to a plan in the original transfer document and further investigation of the Land Registry's historic records is required in order to ascertain the extent of the benefitting land with a degree of certainty. Whilst further work on this issue has been undertaken by external legal advisers and Counsel, significantly more work would be needed to define the exact extent of this. It is known that there is opposition to the disposal of the Green Land.

- 3.3.2 Should the Council continue with investigating this matter there would be significant additional costs at a time of severe financial strain on Council resources. There is no available budget for this work and, given the external legal advice already received; such expenditure would be incurred in the knowledge that there is no meaningful prospect of success.
- 3.3.3. For the reasons set out above, such an exercise is also likely to take considerable time and this delay will have a direct impact on both Council resources and the delivery of Local Plan objectives, again in the context of no meaningful prospect of success even after such work had been undertaken.
- 3.4 It is, however, pertinent to consider disposing of the Green Land in tandem with the Blue Land to ensure connectivity to Longridge for new residents of the prospective adjacent development. This connectivity would have to take into account the covenant and the continued use of the land as open space and therefore it is anticipated this would not affect the covenants in place in respect of the Green Land.
- 3.5 The Blue Land is not subject to a covenant and, for the reasons set out above; all other potential options explored have proved not to be feasible. As a result and on the basis of the work undertaken, the Blue Land offers the only viable solution to obtaining access to the development land.
- 3.6 It is noted that the Blue Land is public open space, and therefore, like the Green Land, is subject to the public open space decision making process and a decision report has been prepared to consider this matter. The Blue Land is in the Green Belt. Although this does not prevent the Council from disposing of the land, this is a matter that would need to be considered as part of any planning application.
- 3.7 On this basis the report was published for a period of 28 days on the Council's web site to enable any further representations to be made prior to a final decision.

4. Implications

- 4.1 It is pertinent to consider disposing of the Green Land to explore the opportunity for providing connectivity to Longridge for new residents of the

prospective adjacent development, which would not affect the covenants in place in respect of the Green Land.

- 4.2 Disposal of the Green Land (in conjunction with the disposal of a strip of the Blue Land) will assist in the delivery of LPS 38. This is subject to a Public Open Space notice process and the planning process could deliver the following benefits:-

- Circa 225 homes allocated under the Local Plan,
- Provision of significant public open space within LPS 38
- Replacing any public open space affected by the provision of an access to the site
- Development of a sustainable and accessible residential site in Knutsford, and
- The developer would be able to design a scheme that enhances the overall provision and quality of public open space in the locality.

- 4.3 In conclusion, should LPS 38 fail to bring forward a development it is highly likely that developers would seek additional land to be allocated as part of the second phase of the Local Plan.

5. Legal Implications

- 5.1 The relevant legal implications in respect of the disposal of the Council's land were covered in the Cabinet Report dated 10th October 2017. A summary of the external legal advice, obtained through the Council's Legal Services team, is contained in the body of this report.

6. Financial Implications

- 6.1 Further work and external legal advice strongly indicates that there is no prospect of gaining access across the Green Land. There would also be a need to expend significant additional funding and time in carrying out any further work on this issue, without any meaningful prospect of success. This would not constitute a prudent use of public resources.

7. Summary

- 7.1 A number of options to gain access to the potential development site have been considered. All but the Blue Land option have been ruled out on the grounds that they are not feasible due to legal restrictions on use by way of covenant in relation to the Green Land and/or physical complexities and viability with regard to alternative access routes. Crossing the Blue Land presents the only realistic opportunity to create certainty of development, subject to the planning process.
- 7.2 It is considered appropriate to dispose of the Green Land in tandem with the Blue Land. This will allow the Green Land to be treated as part of the overall adjacent development and will provide connectivity to the open space for

residents of the prospective adjacent development. This would not affect the covenant in place on the Green Land.

8. Conclusion

- 8.1 This report provides a briefing on the work carried out to discharge Cabinet's recommendations in October 2017 and the conclusions that have been reached as a result.