



**CABINET – 5 JUNE 2002**

## **TOWN AND COUNTRY PLANNING ACT 1990**

### **LAND AT 31 AND REAR OF 29 WATER LANE, AND ADJACENT 68 SUNNY WAY, TOTTON, HAMPSHIRE**

#### **1. INTRODUCTION**

- 1.1 This matter concerns a notice served by the owners of the land at 31 Water Lane, Totton, Hampshire on this Council requiring it to buy the said land.
- 1.2 The notice is part of a statutory procedure that is available to a landowner after a refusal of planning permission if the owner considers that land is not capable of "reasonably beneficial use" in its existing state. This procedure is contained in the Town and Country Planning Act 1990, section 137.
- 1.3 The circumstance that gave rise to the Purchase Notice was a refusal by this Council on 3 April 2001 of outline planning permission for residential development. The application was refused mainly because the land is subject to a policy of the adopted Local Plan, which safeguards this land for highway purposes (the Ringwood Road to Salisbury Road link road). A second reason for refusal related to the unsuitability of the site for residential development in isolation from other adjacent land.

#### **2.0 THE LOCAL PLAN POLICY**

- 2.1 It is a policy of the Hampshire County Council's Structure Plan (T.8) that 'land will be safeguarded in local plans on non-strategic roads to enhance safety, relieve environmental problems and promote other objectives of integrated transport strategies'.
- 2.2 One of the Local Plan policies which follows from this is TE-2 of the New Forest District Local Plan. Its wording in the First Alteration of the Plan reads:  
  
"Following the introduction of traffic restraint measures and environmental improvements in the town centre, an assessment of traffic flows through and around Totton will be undertaken. If the results of this assessment are favourable, a relief road and footpath/footway between Ringwood Road and Salisbury Road will be constructed.

2.3 Active consideration is being given to traffic management issues in Totton town centre. Although a final assessment of the need for the relief road has yet to be made it is clearly essential that the option for its construction is retained and that land be safeguarded for this purpose.

### **3.0 OPTIONS OPEN TO THE COUNCIL**

- 3.1 If the Council were to accept the Purchase Notice, it would be agreeing that the land is not capable of reasonably beneficial use. If this was the case the Council would be obliged to buy the land at market value.
- 3.2 Officers have considered the primary question that has to be addressed which is whether the land is capable of reasonably beneficial use. It is the view of officers that the land could reasonably be used for its current or last use namely in part as an (already existing) access road, and residential garden.
- 3.3 This garden land, until recently, was occupied essentially by two bungalows and their curtilages. These bungalows have since been demolished but the officers believe that such land could still be used to enlarge the gardens of other properties immediately adjacent or nearby.
- 3.4 It should also be noted that any claim that land does not enjoy reasonably beneficial use must relate to the whole of the land in question. Part of the site constitutes an existing access road serving 3 existing bungalows each of which is occupied and makes full use of this access road. It is considered therefore, that on this ground, the land is capable of reasonably beneficial use. However, it is officers' view that this land is also capable of being used as garden land.
- 3.5 If members accept the advice and propose to reject the Purchase Notice, the Council must first send to the Secretary of State a formal rejection notice. There may then be an Inquiry. The Secretary of State has the power to reject the Purchase Notice if he is satisfied that the land is indeed capable of some reasonably beneficial use. Another option available to him is to impose acceptance of the Purchase Notice on this Council but this is considered highly unlikely (see further below).
- 3.6 He also has the power to impose the purchase on the County Council (if the Secretary of State considers the land is incapable of reasonably beneficial use), because the land is safeguarded for proposals which they, as the highway authority, would undertake. This is also considered unlikely because, as stated above, officers do consider the land is indeed capable of reasonably beneficial use. Officers have written to Hampshire County Council asking whether HCC will adopt the Purchase Notice but there has been no response to date. It is anticipated that Hampshire County Council will decline to accept the Purchase Notice, on the same grounds.
- 3.7 The statutory procedure requires the Council to respond to the notice before 22 June 2002 and ideally before 18 June 2002.

### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 If the Council rejects the purchase notice and that rejection is not overturned by the Secretary of State, then the only liability likely for the Council is its costs at any Public Inquiry that the Secretary of State may hold. In such circumstances,

Officers would endeavour to claim such costs from the applicant. However, that would be for the Secretary of State to decide.

- 4.2 If the Secretary of State does not agree with the Council's case that the land is capable of reasonably beneficial use he may direct that the Council buy the land at market value, or more likely, he may direct that Hampshire County Council buy the land in place of the Council. If the Council were directed to buy the land, this would have significant financial implications for the Council but again, officers are of the view that it is most unlikely that this will happen in the circumstances of this case.
- 4.3 If the Council has to accept the Purchase Notice the cost to the Council will be the market value of the land. It would be assessed by reference to the development value of the land and disregarding any diminution in value that might have arisen from the land having been safeguarded in the Local Plan for highway purposes, and might amount to at least some tens of thousands of pounds.
- 4.4 Even if the Secretary of State were minded to impose the Purchase Notice on the Council or Hampshire County Council he will usually first consider whether or not he is prepared to grant planning permission in respect of the land. If he were so minded then of course there would be no financial implications arising from this matter.

## **5. ENVIRONMENTAL IMPLICATIONS**

- 5.1 General improvements to conditions in the town centre may be anticipated if the site continues to be available for and is used to carry out the highway improvements identified in New Forest District Local Plan. Should the land remain in private use as a result of a rejection of the Notice there may be temporary problems of amenity arising from poor maintenance of the garden land pending its disposal but this would not be significant and could be dealt with under other powers available to the Council.

## **6. CRIME AND DISORDER IMPLICATIONS**

- 6.1 There are no crime and disorder implications.

## **7.0 RECOMMENDATION**

- 7.1 That the purchase notice served by the owners of the land in respect of the land at 31 and rear of 29 Water Lane, and adjacent 68 Sunny Way, Totton, be rejected for the reasons set out in this report and more specifically set out in the appendix attached hereto (Statement of Refusal Reasons).

**For further information**

Laurie Moore  
Solicitor  
Tel: (02380) 285373  
E-mail: [laurie.moore@nfdc.gov.uk](mailto:laurie.moore@nfdc.gov.uk)

Tony Huggett  
Area Planning Officer (East)  
Tel: (02380) 285312

**Background Papers**

Purchase Notice  
Planning File

# STATEMENT OF REASONS

## STATEMENT OF REASONS FOR REFUSAL TO PURCHASE

LAND AT 31 WATER LANE AND LAND TO THE REAR OF 29 WATER LANE, TOTTON,  
HAMPSHIRE

THE DISTRICT COUNCIL OF THE NEW FOREST state as follows:

1. On 22 March 2002 New Forest District Council (the District Council) received a letter from The Luken Beck Partnership enclosing a Purchase Notice in respect of land at 31 Water Lane and to the rear of 29 Water Lane, Totton, Hampshire. A copy of the letter is attached as Appendix A.
2. A Plan of the Land the subject of the Purchase Notice and its surroundings is attached as Appendix B. The land is shown edged red on the plan.
3. The land does not have the benefit of any planning permission.
4. There have been no activities carried out on the land in breach of planning control.
5. The Structure Plan policy attached as Appendix C is Policy T8 under which "Land will be safeguarded in Local Plans for improvement schemes on non-strategic roads to enhance safety, relieve environmental problems and promote other objectives of integrated transportation strategies."
6. The policy of the adopted New Forest District Local Plan policy is attached as Appendix D. Policy TE-2 seeks to assist the implementation of this strategy by safeguarding the construction of a link road and footpath / footway between Ringwood Road and Salisbury Road.
7. The First Alterations of the Local Plan (currently at First Stage Deposit) retains this policy but in essence makes it clear that following traffic restraint measures and environmental improvements in the town centre, a further assessment of traffic flows through and around Totton will be undertaken. If the results of this assessment are favourable, "a relief road and footpath/footway between Ringwood Road will be constructed." The amended policy is attached as Appendix E.
8. As yet, no such planning application has been made, nor is the improvement scheme in any Hampshire County Council programme. In the meantime it is clearly important that no development is allowed which would prejudice such a scheme going ahead.
9. On 8 January 2001, The Luken Beck Partnership Ltd, on behalf of S E Welbourne and Messrs Osborne, submitted the planning application that has given rise to the Purchase Notice.

10. Hampshire County Council was consulted in connection with that application. A letter in response from Hampshire County Council is attached as Appendix F. It gave rise to a highway reason for refusal.
11. The planning application was refused. The decision notice is enclosed as Appendix G. The primary reason for refusal was the prejudice that would be caused to the future road proposal. One further reason is that the size and shape of the site are such that redevelopment could not take place without prejudicing the efficient development of this and other adjacent land. Were it not for the highway reason for refusal, it is the view of the District Council that this latter reason could potentially be overcome by negotiation provided the site would be looked at in conjunction with other adjacent land in a more comprehensive manner.
12. No undertakings to grant planning permission have been given in respect of the land.
13. The land does not fall within an area that is either subject to comprehensive development, an action area local plan, a compulsory purchase order or subject to a direction under a General Development Order.
14. The area of the land is 0.08 hectares. It is a T shaped area of land, which broadly divides into 3 sections. The northernmost section of the site fronts onto Water Lane to the West and flats which are currently being constructed to the East.
15. The central part of the site is set between the gardens of bungalows in Water Lane to the North and a bungalow in Sunny Way to the South. The westernmost part of this central section is bounded by the rear gardens of properties in Haselbury Road. This whole central section has the character of an overgrown garden.
16. The southern part of the site is set adjacent to bungalows in Sunny Way. It comprises a metalled roadway which provides vehicular and pedestrian access to these bungalows.
17. The Council considers that the owner has not substantiated its claim that the land is incapable of reasonably beneficial use, for the following reasons.
18. The Council considers that the land is capable of reasonably beneficial use in its existing state. In fact, the southernmost part of the site already has a beneficial use as a means of access to existing properties at 68-74 Sunny Way and it is assumed that those properties have legal rights to use the said access and that such use will continue to be exercised.
19. The central part of the site could have a beneficial use as additional garden land for any one of the adjacent properties in Sunny Way, Haselbury Road or Water Lane. The area appears to have previously been used as garden in association with the now demolished 31 Water Lane and could easily be reinstated as garden at no significant cost by removing existing boundary fences and hedges and tidying up the land. Planning permission would not be required to reinstate this land as residential garden.
20. The northern most part of the site could similarly have a beneficial use as garden for adjacent properties in Water Lane or as an additional amenity area for the adjacent flats which are currently being constructed. The area is already in a reasonably tidy state and

other than possibly the need to define the area with some form of enclosure, the area could be used as a garden or amenity area without the need for any significant works. Planning permission would not be required to use this land as garden in association with adjacent residential properties.

21. The use as garden land or amenity land is compatible with the prevailing residential character of the area
22. The District Council considers that if the land were to be marketed for as garden/amenity land then there is a reasonable prospect of the owner selling or letting the land for that purpose.
23. Notwithstanding the above, in paragraph 17 of DOE Circular 13/83, it is stated that “if a part of the land is found to be capable of reasonably beneficial use, it follows that the server of the notice has not substantiated his claim. Here, (see paragraph 18 above), it is a matter of fact that part of the land already has a beneficial use as the sole means of the access to the existing residential properties at 68-74 Sunny Way. Accordingly, the server has not made out that all of the land is incapable of reasonably beneficial use.
24. However, if it is determined that the land is incapable of reasonably beneficial use in its existing condition then the New Forest District Council invites a determination that Hampshire County Council be required to acquire the land.
25. While Hampshire County Council have not expressed a willingness to comply with the notice, the County Council should nevertheless be the acquiring authority for the land because the planning application giving rise to the Purchase Notice was refused to satisfy the requirements of a highway policy, which can only be implemented by Hampshire County Council. The other reason for refusal could potentially be overcome if the land in question was considered more comprehensively in conjunction with other land.
26. Hampshire County Council has indicated that the land the subject of the Purchase Notice should continue to be safeguarded for highway purposes.