

**TITLE OF REPORT: ITEM REFERRED FROM ROYSTON AND DISTRICT COMMITTEE: 5 JUNE 2013 – LAND AT WINDMILL CLOSE, BARKWAY**

*The following is an extract from the Draft Minutes of the Royston and District Committee meeting held on 5 June 2013.*

**12. LAND DISPOSAL – 1.2 ACRES AT WINDMILL CLOSE, BARKWAY**

**Cllrs Burt and Hunter declared a Non-Pecuniary Interest, as both were Portfolio Holders and therefore Cabinet Members at North Herts District Council. They would remain in the room, join in the debate, but would abstain from voting.**

The Senior Estates Surveyor (SES) presented the report of the Head of Finance, Performance and Asset Management. The SES explained that he was seeking the views of the Royston and District Committee on a proposal to sell approximately 1.2 acres of land at Windmill Close, Barkway as outlined on the location plan appended to the report. The object of selling off the land was to provide finances to help fund the NHDC 2013 to 2016 Capital Programme and to reduce ongoing liabilities for North Herts District Council. The SES explained that at the meeting on 22 March 2011 (Min. 124 refers) , Cabinet had in principle declared the 1.2 acre site as surplus to requirements, subject to a further report back to Cabinet, and on 26 March 2013 (Min. 150 refers) Cabinet resolved that this site be offered for sale on the open market for development subject to the Royston and District Committee raising no substantive objection to the proposals and also subject to the normal approvals (e.g. planning), which may include provisions such as affordable housing and amenity space. At the Cabinet meeting of 26 March, it was also agreed that, following the receipt of offers for the site and after consultation with the local Ward Councillor (Cllr Gerald Morris), it was agreed to delegate the choice of purchaser to the Strategic Director of Finance, Policy and Governance in consultation with the Portfolio Holder for Finance and IT.

However, the site was currently used by a number of residents as an open space and also local residents used it to access their rear gardens in the vicinity. Signs giving permission for this usage had been erected by NHDC in 2007, with the proviso that the permission could be withdrawn at any time.

The local Ward Councillor then addressed Members in support of the residents of Barkway and reminded them that at the Cabinet Meeting of 26 March 2013 (Min. 150 refers), Cabinet had proposed that the land be sold off in its entirety.

However, since that decision, he had noticed several inconsistencies, which he outlined to the Committee. The Member proposed that the Royston and District Committee should ask Cabinet to reconsider their decision to sell off the whole site and suggested that some of it be retained for use by the residents as a green open space or “pocket park”.

At the conclusion of the debate the Committee, by a majority vote agreed to request that Cabinet reconsider their decision to sell off the land in its entirety at Windmill Close, while retaining at least one third of the site as an amenity for residents of Barkway to enjoy.

**RESOLVED:**

- (1) That the information concerning the potential sale of the asset known as Windmill Close, Barkway, be noted; and
- (2) That the Royston and District Committee agreed to recommend to Cabinet that a portion of this asset (at least one third of the area) should be retained and that any final document should contain the condition reflecting this request.

***RECOMMENDED TO CABINET:***

- (1) That the Royston and District Committee agreed that there were substantive reasons for requesting Cabinet to reconsider its decision on the sale of land at Windmill Close, Barkway and to ensure that at least one third of this site be retained as an amenity/green open space "pocket park"; and
- (2) That subject to any sale of this asset, Cabinet should apply a condition requiring the retention of land for the purpose stated in (1) above.

*The following is the report considered by the Royston and District Committee at its meeting held on 5 June 2013.*

**TITLE OF REPORT: LAND AT WINDMILL CLOSE, BARKWAY**

**REPORT OF THE HEAD OF FINANCE, PERFORMANCE & ASSET MANAGEMENT**

**1. SUMMARY**

- 1.1 To seek the Committee's views on proposals to sell approximately 1.2 acres of land at Windmill Close, Barkway as outlined on the plan attached to the report.

**2. RECOMMENDATIONS**

- 2.1 That as part of the consultation process, Royston and District Committee gives its views on proposals to sell approximately 1.2 acres of land at Windmill Close, Barkway.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To provide a financial receipt to help fund the 2013 to 2016 capital programme and reduce ongoing liabilities for the District Council.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Keeping the land as it is. The land is currently used for informal open space. North Herts District Council has no operational requirements for the land. Local residents have expressed the need to continue with the current use as open space.

**5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 5.1 The views of Royston and District Committee are being sought at this meeting. Barkway Parish Council and a local group of Barkway residents have been consulted.

**6. FORWARD PLAN**

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 8 October 2012.

**7. BACKGROUND**

- 7.1 The District Council owns freehold land HD498175, a site of approximately 2.9 acres at Windmill Close, Barkway. The site is split into two halves. The northern half of the land is approximately 1.7 acres let under an agricultural tenancy. The southern half of approximately 1.2 acres is currently open space provided under the Housing Acts.

- 7.2 The land is part of that acquired in December 1944 by Hitchin Rural District Council. On 24 November 1980 the land registered under HD498175 was included in a larger site let to a farmer. In 1984 a part of the leased site of 0.79 acres was surrendered for housing development. On 18 March 1992 Housing Services Committee approved the sale of further land for affordable housing to Howard Cottage Society. The remaining farm land, being reduced

in size, was no longer economical. The Farmer agreed to surrender all of the remaining land back to the District Council from 29 September 1992. This was reported to Housing Services Committee on 7 October 1992.

- 7.3 On 15 June 2010 the Senior Estates Officer met with Dr Bob Davidson, the then Chairman of the Barkway Parish Council, at the head office of North Hertfordshire Homes, to discuss proposals for residential development of approximately 1.2 acres of the southern half of the District Council's land at Windmill Close. At that time North Hertfordshire Homes was also discussing with the Parish the proposals to redevelop Wheatsheaf Meadow, Barkway. The Parish Chairman indicated the Parish would not object to residential development of the Windmill Close land provided there was provision of a Pocket Park on part of the site. The Pocket Park could provide improved amenity facilities at no cost to the Parish Council.
- 7.4 At its meeting of 22 March 2011 (Min. 124) Cabinet in principle declared surplus the 1.2 acre site at Windmill Close subject to a further report back to Cabinet.
- 7.5 On the 26 March 2013 a further report was considered by Cabinet (minute 150). Cabinet resolved:
- (1) That, subject to the Royston and District Committee raising no substantive objections to the proposals, the 1.2 acre site at Windmill Close, Barkway be offered for sale on the open market for development, subject to the normal approvals (e.g.) planning, which may include provisions such as affordable housing and amenity space; and
- (2) That, following receipt of the offers for the site and after consultation with the Local Ward Councillor, the decision on which one to accept be delegated to the Strategic Director of Finance, Policy and Governance, in consultation with the Portfolio Holder for Finance and IT.
- 7.6 The reason for the decision was to provide a financial receipt to help fund the 2013-2016 Capital Programme and reduce ongoing liabilities for NHDC.

## **8. ISSUES TO BE ADDRESSED**

- 8.1 The 1.2 acre site is currently used as open space. It would appear that a number of residents in Royston Road and Windmill Close may be crossing the land to gain access to the rear gardens of their properties. The District Council has given permission for the land to be accessed by way of two notices on the land that reads "The Council now gives permission for this land to be entered on foot for recreation only, but this permission may be withdrawn at any time." These signs were erected in January 2007 and have remained in place since then.
- 8.2 Prior to disposal of the land it is necessary to advertise the intended sale in a local newspaper inviting comments or objections from the public. Adverts were placed in The Royston Crow on 3 & 10 January 2013.
- 8.3 In 2010 Barkway Parish was consulted and the response noted in paragraph 7.3. Further, on 14 December 2012 the Barkway Parish Clerk was advised that a report was being prepared for North Herts District Council's Cabinet of 29 January 2013 seeking authority to sell approximately 1.2 acres of land at Windmill Close.

- 8.4 Barkway Parish again considered the proposals for a second time at its meeting of 14 January 2013. The Parish Clerk reports that “all 7 Parish Councillors were at the meeting and that there were 6 residents present representing other residents in the vicinity who were unable to attend. They all commented on the item. Concerns were raised over what the land might be used for.” The Parish Council were asked to organise a residents meeting. This was arranged for Thursday 31 January. The Senior Estates Surveyor accepted a request to attend the Parish meeting.
- 8.5 In a letter dated 24 January 2013 a petition was received from 65 residents in Windmill Close and Barkway High Street. The covering letter indicated that “The feelings and comments from all the residents while collecting the petition are unified feelings of disappointment and anger that the country aspect of their homes could be taken away if use of this very popular asset is removed and its current use as a social and recreation area denied them.”
- 8.6 The petition was worded “We the undersigned would like to collectively record our objection to the land being disposed of. The land is a local asset and any potential future development would rob the overlooking houses of the countryside aspect and open feel for all the properties concerned. The open aspect is a major reason why a lot of the current owners chose to purchase property in Barkway and why they continue to enjoy life here.”
- 8.7 As well as the petition 35 Barkway households signed a preprinted standard letter that read “The land has since the building of the local houses over the last 25+ years been available to the local community as a recreation area/pocket park. This area is very popular with all the residents where they are comfortable with the local children playing within the vicinity of their homes, safe and away from ever increasing traffic on local roads. The land has been looked after and maintained by the local residents keeping grass cut and the area free from overgrowing and litter. The Council contractor cuts the grass approximately twice yearly but without the regular on-going maintenance by the residents the whole area would have become overgrown and an eyesore years ago. The land is surrounded on three sides by current housing and any development on the land would restrict the open feel and countryside aspect from all the existing properties. The open aspect is a major reason why a lot of the current owners choose to purchase property in, and continue to enjoy life in Barkway. A large development over the site would also deprive the local community of the social use of the area. This area of the village has recently seen the development of the Chapel Close estate with all the noise and disruption caused. This also currently highlights that the need for additional private housing in the immediate area should be reviewed very closely as 30% of the Chapel Close development is still unsold 6 months after completion. Finally we would request details why this land is now being considered for sale rather than retaining it as a recreation area and asset for all the local community to continue enjoying?”
- 8.8 At the Parish and Residents’ meeting on 31 January 2013 a number of questions were raised. The Senior Estates Surveyor informed those present that the final decision on whether or not to sell the land in Windmill Close has not yet been made by Members and that marketing had not started. If the land was sold this would be on the open market to raise a capital receipt.
- 8.9 Residents asked if the land could be registered as a Village Green. The Senior Estates Surveyor replied he thought this unlikely as the District Council has taken action to protect against this possibility. Residents wanted to know what value was placed upon the land by the District Council. This request was

declined by the Senior Estates Surveyor in order to maintain the District Council's requirement to obtain the best reasonable price.

- 8.10 The Parish Council's meeting notes state "concerns were expressed by residents that this area of land has been used for many years (27+) as a recreational area. It continued to be well used and the residents had been maintaining the land. The village currently had very few amenities and was therefore thought not the best place for further housing development. It was thought that there was a possibility that NHDC would consider selling just part of the land in question, leaving a small park area. The Parish Council urged all residents to write in individually with their views. "
- 8.11 On 15 February 2013 the Barkway Parish Clerk advised that further to a Parish Council meeting earlier that week, the view of the Parish Council at the moment is to support the residents in their quest to retain the area as an open space.

## **9. COMMENTS ON ISSUES RAISED BY RESIDENTS**

- 9.1 This section clarifies the comments made by Barkway Residents and the Parish Council.
- 9.2 The pre-printed letter dated 15 January 2013 from the residents refers to "This also currently highlights that the need for additional private housing in the immediate area should be reviewed very closely as 30% of Chapel Close development is still unsold 6 months after completion." Chapel Close was redeveloped by North Hertfordshire Homes. Their development officer has confirmed that the scheme comprised 10 dwellings, of which two bungalows or 20% were for market sale. One bungalow is under offer and the other bungalow (10%) remains available. It seems likely that if houses rather than bungalows had been built for market sale they both would have been sold by now.
- 9.3 The Residents expressed concerns "that the country aspect of their homes could be taken away if use of this very popular asset is removed and its current use as a social and recreation area denied them". It is assumed that by referring to a "country aspect" the Residents are referring here to rural views. Numbers 3 to 37 Windmill Close are on the other side of the road and will not lose any views of the countryside outside the village. Numbers 2 to 20 Windmill Close face houses across the road and back onto the enclosed area of the District Council's land and other residential properties in the High Street. Numbers 7 to 11 High Street have rear views of other houses. Numbers 13 to 25 High Street have rear views of the District Council's amenity land and other houses 2 to 20 and 27 to 37 in Windmill Close. Some, say numbers 15 to 25 High Street, may have diagonal views of the countryside outside the village between 37 Windmill Close and Tallard. In summary even if all of the District Council's land was developed, it would seem that at most, less than 1 in 5 properties may lose some views of the countryside. Developing only part of the 1.2 acre site should further reduce the loss of views of the countryside.
- 9.4 The Residents were concerned about the loss of social and recreation area. When the Senior Estates Surveyor visited the site over the last two to three years not one person was spotted using the land. This is not a proper survey as it based upon only 2 or 3 visits. There could be many reasons why the land was not being used at the time of the visits, such as timing or weather conditions.

- 9.5 Parts of the site are overgrown with thicket and trees. Rubbish has been dumped. There have been bonfires. Some residents seem to be using the land to store compost bins, vehicle trolleys, recycling bins and other items. There is one football post with nets that looks rusty and a bit out of shape. If as proposed by the Parish Chairman in 2010, part of site was retained for a new pocket park then it would be possible as a condition of sale to provide improved amenity facilities on part of the 1.2 acre site at no cost to the residents or Parish Council.
- 9.6 It has been suggested that District Council's land has "over the last 25+ years been available to the local community as a recreation area/pocket park", standard letter dated 15 January 2013 or "used for many years (27+) as a recreational area", Minutes of the Residents Open Meeting 31 January 2013. This would imply use as recreational land since at least 1988. It is not clear how this was possible as there was an agricultural tenancy on the land until September 1992.
- 9.7 The Parish's original proposal to support development of part of the 1.2 acre site with the remainder becoming a new Pocket Park would appear to be a reasonable way forward. If 6 to 10 house were constructed along Windmill Close, this would complete the row of houses in the street and still provide amenity land to the rear of most of the houses surrounding the site.

## **10. LEGAL IMPLICATIONS**

- 10.1 Cabinet in exercising its functions has powers to dispose of land or buildings where the consideration is between £250,000 and £2,500,000.
- 10.2 There may be specific legal implications relevant to the sale of the property e.g. covenants on title, easements, third party rights.
- 10.3 The New Homes Bonus is paid through S.31 of the Local Government Act 2003 as a non-ringfenced grant.
- 10.4 The Contract Procurement Rules and specifically Appendix I apply to the sales of land or property. If Cabinet was to sell this land the Officers seeking to market and dispose of the land would be required to do so within the remit of the Contract Procurement Rules.
- 10.5 Section 123 Local Government Act 1972 allows a Council to dispose of land in any manner it wishes, provided that the consideration is the best that can be reasonably obtained unless the Secretary of State consent to the disposal.
- 10.6 The Council would have a valid defence to any application to register the site as a Town or Village Green, given that the residents who have been using the site have been doing so with the express permission of the Council. This express permission has been communicated to the residents by way of the signs and fencing mentioned earlier in this report.

## **11. FINANCIAL IMPLICATIONS**

- 11.1 The sale of assets reduces the risk to the Council arising from the duties under the Occupiers Liability Act 1957 and 1984. The sale will also generate a capital receipt to assist in funding the Council's capital investment programme.
- 11.2 Central Government will provide New Homes Bonus funding for six years on the basis of the national Band D average (£1,439 for 2011). Currently this is

split 80% to the District Council and 20% to the County Council, with an additional £350 per year to the District for each affordable home.

11.3 Assuming 10 homes were to be built, this development would represent a New Homes Bonus sum in the region of £11,650 per year for six years. This is for illustration only as the exact number of dwellings will be subject to planning. Should a pocket park be provided by a developer, then this may reduce the potential for the number of dwellings that could be constructed.

11.4 The value to be realised by this sale of land will need to recognise the costs the purchaser will incur in ensuring the site is safe for the proposed future use. However this sale would also mean that the Council did not incur any future costs for remediation work.

## **12. RISK IMPLICATIONS**

12.1 A risk entry is recorded on Covalent, the Council's Performance & Risk system relating to the sale of this specific area of land. The risks that may delay or prevent the sale of this land include: village green issues; applications under the Localism Act; prescriptive rights across the land; the Parish Council pocket park and the current use of the land by adjacent residents to gain access to the rear of their properties.

## **13. EQUALITIES IMPLICATIONS**

13.1 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

13.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

13.3 Whilst there may be some loss of public amenity land arising from the proposals in this report there are also positive equality implications. Were Cabinet minded to support capital, community projects would be of benefit to the wider North Hertfordshire community, and any potential for development, especially for social housing in this rural area in particular to be noted.

## **14. SOCIAL VALUE IMPLICATIONS**

14.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities, implications and opportunities are identified in the relevant section at paragraphs 12.

## **15. HUMAN RESOURCE IMPLICATIONS**

15.1 There are no Human Resource implications from this report.

## **16. APPENDICES**

16.1 Appendix A - Location plan (The plan is for identification purposes only. All measurements are approximate).



## **17. CONTACT OFFICERS**

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- 17.5 Policy and Community Services, Liz Green, Head of Policy and Community Services, 01462 474230, Liz.Green@north-herts.gov.uk

## **18. BACKGROUND PAPERS**

- 18.1 Minute 124, Cabinet 22 March 2011.
- 18.2 Public Notices, Royston Crow 3 & 10 January 2013.
- 18.3 Letters dated 15 January 2013 and Petition dated 24 January 2013 from Residents of Windmill Close and High Street, Barkway.
- 18.4 Minutes of Residents Open Meeting 31 January 2013.
- 18.5 Minute 150, Cabinet 26 March 2013.
- 18.6 Freehold Land Registry title number HD498175.