

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 17 May 2021

Portfolio:	Planning and Development
Subject:	Purchase Notice for Springfield Way Open Space, Stubbington
Report of:	Director of Planning and Regeneration
Corporate Priorities:	Dynamic, prudent and progressive Council

Purpose:

For the Executive to decide whether or not to comply with the Purchase Notice served by Chambers Properties Ltd requiring the purchase by the Borough Council of two areas of open space at Springfield Way, Stubbington.

Executive summary:

A Purchase Notice has been served by Chambers Properties Limited in respect of open space at Springfield Way, Stubbington.

A Purchase Notice is a legal notice that the owner of land can serve on the local planning authority where planning permission for the development of the land has been refused, and the land has become incapable of reasonably beneficial use in its existing state. A Purchase Notice can only be served in specific circumstances.

The land the subject of the Purchase Notice was purchased by Chambers Properties Ltd in 2018. In 2019 Chambers Properties Ltd applied for planning permission for the construction of housing on the land. That application was refused, and Chambers Properties Ltd are of the view that the land has become incapable of a reasonably beneficial use in its existing state, and has submitted a Purchase Notice to the Borough Council that requires the Council to purchase the land.

The Council must determine whether the land has a restricted use by virtue of an existing planning permission and therefore whether to refer the Purchase Notice to the Secretary of State.

Recommendation:

It is recommended that the Executive agrees that:

- (a) the land the subject of the Purchase Notice has a restricted use by virtue of an existing planning permission, and
- (b) the Council declines to confirm the Purchase Notice and refers it to the Secretary of State.

Reason:

The Council is required under the Town and Country Planning Act 1990 to respond to the Purchase Notice which has been served on it.

Cost of proposals:

As the Council does not propose to purchase the land the subject of the Purchase Notice, there is no cost associated with the proposals as recommended to the Executive other than the cost of officer time in referring the matter to the Secretary of State.

Should the Secretary of State decide to confirm the Purchase Notice, the Council will be obliged to purchase the land. Preliminary estimates of the value of the land have been undertaken and details of this are provided within the confidential appendix to this report. The value of the land may be determined by the Upper Tribunal (Lands Chamber) if a value cannot be agreed between the parties.

Appendices:

A: Ordnance Survey Extract showing the location of the land subject to the Purchase Notice

B: Decision Notice and layout plan for planning permission reference FMU.3842/19

C: Land valuation (confidential)

Background papers: None

Reference papers: None

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Executive Briefing Paper

Date:	17 May 2021
Subject:	Purchase Notice for Springfield Way Open Space, Stubbington
Briefing by:	Director of Planning and Regeneration
Portfolio:	Planning and Development

INTRODUCTION

1. The land in question is located on the northern side of Springfield Way, Stubbington, and currently comprises land designated as 'existing open space' in the adopted Local Plan. The land is divided into two parts, separated by the metalled public footpath, and equates to approximately 0.14ha of publicly accessible open space.
2. The area of open space has been privately owned since the grant of planning permission for the residential estate, of which it forms part, in 1974, despite being currently managed and maintained by the Borough Council. Both areas are largely laid to grass, although the larger area of open space contains eight trees protected by Tree Preservation Orders. The adjoining land to the east is a larger area of open space owned and managed by the Borough Council.

PLANNING HISTORY

3. In 1974 planning permission was granted for a residential housing estate (planning reference FMU.3842/19) incorporating the land the subject of the Purchase Notice. The decision notice and layout plan are appended to this report at Appendix B. The land in question is shown on the approved layout plan marked as "open space". Planning permission was required to be carried out in accordance with, amongst other things, the 'plans and particulars' submitted with the application, which includes the layout plan.
4. In August 2018 two applications for Lawful Development Certificates were submitted to the Borough Council by Chambers Properties Ltd seeking confirmation that they could enclose the two parcels of land they own with 2 metre high timber, close boarded fencing (Application References: P/18/0864/LP and P/18/0866/LP). Both applications were refused in September 2018. Officers considered that the enclosure of the land represented a material change of use from publicly accessible open space to enclosed

private land, which would require a grant of planning permission.

5. In December 2019 a further planning application was submitted for the construction of three houses on the land (Application Reference: P/19/1295/FP) by Chambers Properties Ltd. This application was also refused in February 2020, under delegated powers following the receipt of almost 70 letters of objection from local residents. The application was refused for the following reasons:

The development would be contrary to Policies CS4, CS17 and CS21 of the Adopted Fareham Borough Core Strategy 2011, and Policies DSP13 and DSP15 of the Adopted Local Plan Part 2: Development Sites and Policies Plan; and is unacceptable in that:

- a) *the development would lead to the loss of existing open space;*
- b) *the provision of fencing immediately adjacent to, and along a significant length of, the public footpath would result in an unacceptable level of enclosure which would have a detrimental impact on the sense of safety and security for all users of the path;*
- c) *the proposal would have likely adverse effects on the integrity of European Protected Sites in combination with other developments due to the additional generation of nutrients entering the water environment and the lack of appropriate and appropriately secured mitigation; and,*
- d) *In the absence of a legal agreement to secure such, the proposal would fail to provide satisfactory mitigation of the 'in combination' effects that the proposed increased in residential units on the site would cause through increased recreational disturbance on the Solent Coastal Special Protection Areas.*

6. Whilst matters (b) – (d) were not insurmountable issues, reason for refusal (a) resulted in a significant conflict with adopted Local Plan policy which could not be addressed or mitigated.
7. None of the refused applications were subject to an appeal to the Planning Inspectorate.

THE PURCHASE NOTICE

8. The Council received the Purchase Notice from Chambers Properties Ltd on 29th October 2020.
9. The legal basis for Purchase Notices is set out in Part VI of the Town and County Planning Act 1990. A Purchase Notice can only be submitted where the following criteria are satisfied:
 - (a) Planning permission has been applied for, for the development of the land, and

that application has been refused (as in this case) or granted subject to conditions; and

(b) The land is incapable of reasonably beneficial use and cannot be rendered capable of reasonably beneficial use either by the carrying out of another development for which it has planning permission or by development that is authorised as permitted development or by development that does not require planning permission at all; and

(c) The refusal of planning permission was within the last 12 months.

10. There are various formalities with which the Purchase Notice must comply (including that it must be in writing and it must include all of the land that was subject to the refusal of planning permission). Officers can confirm that the Purchase Notice as submitted complies with these requirements and is otherwise valid.

POWER TO REFUSE TO CONFIRM PURCHASE NOTICE WHERE LAND HAS RESTRICTED USE BY VIRTUE OF PREVIOUS PLANNING PERMISSION

11. The intended effect of a Purchase Notice is to require the local planning authority to purchase land that has been rendered incapable of a reasonably beneficial use as a result of a refusal of planning permission. There is an exception to this obligation, however, where the land the subject of the Purchase Notice has a restricted use by virtue of a previous planning permission.

12. The relevant legislation is section 142 of the Town and Country Planning Act 1990, which provides that a Purchase Notice need not be confirmed where (a) the land is part of a larger area in respect of which planning permission has previously been granted, and (b) the planning permission was granted on an application which *'contemplated (expressly or by necessary implication) that the part should not be comprised in the development for which planning permission was sought'* or should be *'preserved or laid out in a particular way as amenity land'*.

13. As previously set out above, and as can be seen from the attached decision notice and layout plan attached as Appendix B, the land the subject of this Purchase Notice was intended to be laid out as open space, or *'amenity land'*, in its entirety.

14. This power to refuse to confirm the Purchase Notice is available only to the Secretary of State and not to the local planning authority. Therefore, the Council will need to refer the Purchase Notice to the Secretary of State advising that it does not intend to comply with the Purchase Notice for this reason.

15. The Secretary of State has a number of powers on referral of a Purchase Notice. He may refuse to confirm the Purchase Notice because the land has a restricted use as set out above. He may refuse to confirm the Purchase Notice for other reasons, such as that the land is not incapable of a reasonably beneficial use, or he may confirm the Purchase Notice, in which case the Council will be required to purchase the land. He may also grant planning permission for the development as originally proposed. The owner of the land and the Council will have the ability to make representations to the

Secretary of State before he makes a final decision.

CONSEQUENCES IF SECRETARY OF STATE CONFIRMS PURCHASE NOTICE

16. Notwithstanding that the land in question is intended to be retained as open space, the Secretary of State may nevertheless confirm the Purchase Notice and so require the Council to purchase the land.
17. If the Secretary of State decides to confirm the Purchase Notice, he must first decide that the land is 'incapable of reasonably beneficial use'. The concept of land becoming 'incapable of reasonably beneficial use' has no specific legal definition, but there are a number of principles that have come from case law over the years that provide guidance as to how the term should be interpreted. Because it is identified in the adopted local plan as 'existing open space' and proposed to be designated as 'Local Green Space' in the draft local plan, it is unlikely that the Council would grant planning permission for any other use of the land. The land does not benefit from planning permission to be used for anything other than its continued use as open space, and the use of land for agricultural purposes (which would not require planning permission) is unrealistic since it does not bring with it the right to erect fencing or any other associated infrastructure.
18. Whilst a 'reasonably beneficial use' does not necessarily have to be of a financial benefit to the owners, it does have to be a use which is of particular use of the owners and not simply to the public at large. Therefore, its use as open space, whilst clearly of benefit to the public at large, is not of any particular beneficial use to the owners.
19. Following any such confirmation by the Secretary of State, the process that would follow is one similar to compulsory purchase, where there is a short period for the parties to negotiate and agree a price for the land, but, if no such agreement can be reached, either party may refer the matter to the Upper Tribunal (Lands Chamber) who will independently assess the value of the land and make a binding decision.
20. As the land will have been classed as being incapable of a reasonably beneficial use, the value of the land will inevitably be low. Details of the land valuation are included within the confidential appendix and would be subject to negotiations with the landowner or a decision of the Upper Tribunal (Lands Chamber).

RECOMMENDATION

21. For the reasons set out in the report, the Executive are asked to agree that the land the subject of the Purchase Notice has a restricted use by virtue of an existing planning permission, and for this reason the Council declines to confirm the Purchase Notice and refers it to the Secretary of State.

Enquiries: For further information on this report please contact Lee Smith (01329 824427)