

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 01 September 2014

Portfolio:	Policy and Resources
Subject:	Land Adjoining 268 Brook Lane
Report of:	Director of Finance and Resources
Strategy/Policy:	Asset Management
Corporate Objective:	A dynamic, prudent and progressive Council

Purpose:

To ask the Executive to reconsider the matter of disposal of land adjoining 268 Brook Lane which came before it on 4 November 2013 in view of legal representations relating to the previous decision.

Executive summary:

The Executive on 4 November 2013 considered a report which sought their views on the renewal or otherwise of the then current 3 year licence of the land adjoining 268 Brook Lane, Sarisbury Green, which has since been extended to the 9 October 2014, having regard to the consideration of an earlier report on this matter by the Executive on 7 January 2013.

The Executive was advised that following an informal meeting with the ward Councillors at which a division of the land adjoining 268 Brook Lane was suggested, both interested parties (numbers 266 and 268 Brook Lane) agreed a compromise arrangement, subject to an independent valuation of the land.

Following the decision one of the parties to the compromise arrangement has via their solicitors submitted representations on the validity of the decision. Following advice from the Southampton and Fareham Legal Services Partnership it is now necessary to ask the Executive to consider the matter again.

Recommendation/Recommended Option:

- (a) That the decision made by the Executive on 4 November 2013 is reconfirmed and progressed;
- (b) The parties are given until 30 September 2014 to confirm in writing their acceptance of the main terms of sale as set out in the confidential Appendix E;
- (c) If either party is not prepared to agree to the terms of sale without further negotiation or condition the Council will withdraw its offer and will reserve the right to dispose of the land to the other party on the terms set out in the confidential Appendix E or as it sees fit; and

(d) The Solicitor to the Council be given delegated authority to take all ancillary actions to give effect to this resolution.

Reason:

To ask the Executive to reconsider the matter in view of a potential legal challenge to the previous decision.

Cost of proposals:

The Council will receive a capital receipt from the sale of the land.

Appendices: **A:** Report to the Executive 4 November 2013 – Land adjoining 268 Brook Lane, Sarisbury Green.
B: Decision No.326
C: Compromise arrangement plan
D: Consultation Comments and Officer Responses
E: Confidential Appendix setting out terms for the disposal of the land adjoining 268 Brook Lane.
(NOT FOR PUBLICATION by virtue of Paragraph 1 & 3 of Part 1 of Schedule 12A of the Local Government Act 1972.)

Background papers:

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Executive Briefing Paper

Date: 01 September 2014

Subject: Land Adjoining 268 Brook Lane

Briefing by: Director of Finance and Resources

Portfolio: Policy and Resources

INTRODUCTION

1. The Executive on 4 November 2013 considered the report attached as Appendix A which sought their views on the renewal or otherwise of the 3 year licence of the land adjoining 268 Brook Lane, Sarisbury Green which has been extended to the 9 October 2014 having regard to the consideration of an earlier report on this matter by the Executive on 7 January 2013.
2. The Executive was advised that following an informal meeting with the ward Councillors at which a division of the land adjoining 268 Brook Lane was suggested, both interested parties (numbers 266 and 268 Brook Lane) agreed to the suggested compromise arrangement, subject to an independent valuation of the land.
3. After considering the report the Executive resolved to approve the compromise arrangement to offer, for disposal, the land adjoining 268 Brook Lane, Sarisbury Green, subject to an independent valuation of the land and that the area of land shown hatched on the plan attached as Appendix B be ring-fenced for offer of disposal to the owners of 266 Brook Lane with the remainder of the strip of land being ring-fenced for offer of disposal to the owners of 268 Brook Lane, following the termination of the then existing licence on 9 April 2014.
4. Following the meeting of the Executive letters were sent to both parties setting out the main terms for disposal. The main terms are contained in Confidential Appendix E together with details of the independent valuation of the land.
5. One of the parties to the compromise arrangement has via solicitors submitted representations regarding the validity of the decision. After advice received from the Southampton and Fareham Legal Services Partnership certain procedures were undertaken and it is now necessary to ask the Executive to consider the matter again.

LEGAL CONSIDERATIONS

6. The Briefing Paper attached as Appendix A refers in paragraph 10 to the provisions of Section 123 of the Local Government Act 1972 (“the 1972 Act”). This provision sets out considerations that the Council must consider when disposing of land in certain circumstances. However this provision does not apply to disposal of land which was acquired for planning purposes unless and until an application under Section 106A of the Town & Country Planning Act 1990 (“the 1990 Act”) is approved to discharge the obligation on the basis that the land acquired for the stated purposes is no longer a requirement as it “no longer serves a useful planning purpose”. On discharge of the planning obligation the land can be sold under the general power contained in Section 123 of the 1972 Act. Section 233 of the 1990 Act is then no longer engaged as the land is no longer held for planning purposes and is available for disposal as being surplus to the authority’s requirements. Such application under Section 106A of the 1990 Act has been made to the local planning authority and the decision to approve granted with the formal decision notice discharging the 106 Agreement being issued on 5th June 2014 under planning reference P/14/024/OD.
7. Under Section 123 of the 1972 Act an authority may dispose of land held by them ‘in any manner they wish’ although the consent of the Secretary of State is required where the consideration for the disposal is ‘less than best that can reasonably be obtained’. Section 123 (2A) of the 1990 Act is not engaged as the land is not open space (i.e. land being used for public recreation) as it remains subject to an exclusive (albeit an extended) licence which entitles the licensees to use it until 9 October 2014.
8. The Crichel Down Rules need to be addressed as the land could have been acquired compulsorily and the threat of compulsion should be assumed. The rules give rise to an obligation to offer the land back to the former owner at market value. Having taken Counsel’s advice and considered the application of the rules it is advised that such an offer back is no longer feasible due to the passage of time and the previous owner whereabouts being undetermined. Successors in title do not enjoy the same rights as the original owner in this regard.
9. The land is owned by the Council subject to various covenants. These will transfer to subsequent owners.
10. As landowner the Council can manage the land and dispose of it to such person and in such manner and subject to such conditions as are deemed expedient to secure the best use and value of the land in accordance with the provisions of Section 123 of the 1972 Act.
11. The Council has no obligation to retain or sell; all options may be considered and are solely at the Council’s discretion. If it was to dispose of the land to a third party it must accord with the provisions of Section 123 of the 1972 Act as set out above. This provision also provides that the Secretary of State’s permission is required if a disposal is for less than the best consideration reasonably obtainable. However due to the small value of the land the Council can in essence dispose of it as it sees fit for a sum based on an open market valuation.

12. Both potential parties to the proposed disposal have sent a number of communications to the Council (some via their respective legal representatives and some in person) in advance of the meeting on 1st September that they wish to be considered. An appendix is attached which sets out a summary of their main comments and the officer response to each point raised. These comments are a material consideration for members in making a final decision as to how to proceed with this matter and should be considered when reaching a decision on this matter, together with all other relevant considerations as land holder in this regard.
13. Members should note that they are not bound to follow their previous decision of 4 November 2013 and must consider this matter afresh. They are not however disbarred from pursuing the option put forward in November as their preferred option in this case; with a fall back decision in the event that a division of the land cannot be achieved within a reasonable time (see conclusion below).

FINANCIAL IMPLICATIONS

14. If the land were disposed of the Borough Council would receive a one-off consideration from the purchaser(s).

CONCLUSION

15. The Executive decision of 4 November 2013 must be reconsidered in light of a challenge received to that decision. This report sets out the basis for a proposed disposal of the land that is the subject matter of the report.
16. It is proposed that the decision of the Executive made on the 4 November 2013 is reconfirmed and progressed and the land is offered to the two parties in accordance with the main terms detailed in Confidential Appendix E. If either party is not prepared to agree to the terms of sale without further negotiation or condition by 30 September 2014 the Council will withdraw its offer and will reserve the right to dispose of the land to the other party or as it sees fit.
17. Any sale should be subject to conditions relating to the maintenance of the land, other standard covenants to protect the public interest which may be required and subject to the pre-existing covenants already registered against or affecting the Council's land title.