

# FAREHAM

## BOROUGH COUNCIL

**Date:** 1 September 2014

**Subject:** Land Adjoining 268 Brook Lane

Please refer to Executive Report xps-140901-r04-kbo

**Briefing by:** Director of Finance and Resources

**Portfolio:** Policy and Resources

The following are consultation comments and officer responses

Consultation comment	Officer response
1) Acquisition for planning purposes under s.106 requires disposal to be considered under s.233 T&CPA 1990 rather than s123 LGA 1972.	This matter is addressed in the briefing paper above. The planning purpose has been lawfully discharged by application under s.106A of the TCPA 1990 and the land is therefor required to be disposed of under s.123 LGA 1972.
2) Mr and Mrs Worwood have made an offer to purchase the whole of the land at open market value with a covenant not to develop and subject to the trees remaining on site.	The Council notes this offer but the officer recommendation is to proceed with a division of the land as set out in this paper. This option is lawfully open to the Council under s.123 LGA 1972 which allows a Council to dispose of land 'in any manner it wishes'.
3) We note the offer to allow (the parties) to address the meeting yet you state the proposal is non negotiable. What purpose is therefor served in addressing the meeting?	The option being put forward by officer recommendation is not subject to prior negotiation. It is open to Members, having heard from all parties to any matter before the Executive to make a decision that departs from the officer recommendation if they so wish. The offer to address the Executive is subject to the normal operation of the Council's Constitution which allows a member of the public to address the meeting with the consent of the Chairman of that meeting and all parties to this matter are strongly encouraged to attend and make representation in relation to this matter if they so wish.

<p>4) It is (the Worwoods) preference to acquire all of the land to maintain the status quo.</p>	<p>Noted, however the officers recommended approach is to offer a division of the land to better meet the needs of all adjacent neighbours and not those of a single party to the matter. It is however open to the Executive to determine otherwise.</p>
<p>5) Under protest and only if the offer for purchase of the full site is rejected (the Worwoods) remain 'interested' in the purchase of part of the site as proposed.</p>	<p>Noted.</p>
<p>6) (Mr Whitewood) would be interested in acquiring the land adjoining (his) property on the terms referred to, and indeed all of the land if his neighbours do not wish to proceed.</p>	<p>Noted</p>
<p>7) I (Mr Whitewood) have written to the owners of 268 to enquire if they would be willing to amend the compromise agreement to move the rear boundary to be in line with the rearmost point of their garage.</p>	<p>Noted, however the officer recommendation is not open to negotiation unless varied by Members at the Executive meeting of 1<sup>st</sup> September 2014. If, following purchase, the land owners wish to engage in further negotiation for further sales or amendments between themselves they are of course open to do so subject to complying with any conditions attached to the sale.</p>
<p>8) I presume it is not possible for you as vendors to move the rear boundary as noted above?</p>	<p>See response to 7) above.</p>
<p>9) Query re delineation of front boundary with previous maps showing this as the kerbside of Brook Lane.</p>	<p>Any previous maps are defunct. The sale will proceed on a map agreed with the Council whose decision on the boundary of the land to be sold will be final and binding.</p>
<p>10) Eastleigh BC has written on behalf of HCC advising of their intention to extend pavements outside the property. This would affect the value of land as it would restrict the number of cars that can be parked there. It would seem silly to acquire the land from FBC only for it to be compulsorily purchased by HCC for footway works.</p>	<p>Noted, and officers are in contact with HCC regarding the footway scheme. It is unlikely to affect the extent of land which could be utilised for parking purposes. However the terms and conditions of sale stand and FBC do not value land based on what may or may not occur in the future. It is for the parties to the sale, as offered by FBC, to determine whether they wish to proceed or not on the terms and price offered and to take the risk on such matters.</p>
<p>11) Perhaps it would be reasonable to reapportion the land to allow room for the proposed pavement whilst at the same time moving the rear boundary back as suggested.</p>	<p>See response to 10 above. No variation in the sale proposals are currently recommended to the Executive.</p>

<p>12) The Executive Briefing Paper of 4 November 2013 stated that the land is not the subject of onerous covenants.</p>	<p>The Council acknowledge that the reference to there being no onerous covenants within the Briefing Paper dated 4 November 2013 was incorrect and this is rectified by the report to the Executive dated 1 September 2014.</p>
<p>13) The Worwoods have confirmed a large number of bats that seem to roost in the Hedge.....The Council as a matter of law must take this into account as a material planning consideration.</p>	<p>Noted. Prior to doing any works which would disturb or destroy the bats or their habitat and their feeding/roosting areas a licence would be required from Natural England. Without such a licence such works would be a criminal offence.</p>
<p>14) The Worwoods would wish to protect the trees between the strip of land and no 266.</p>	<p>There is a currently covenant in respect of the trees which prevents actions by 266 which would "injure maim or harm the hedge or any root thereof, subject only to the normal course of trimming but without altering the uniform size and appearance thereof". The enforceability of this covenant in the long term would depend upon the ownership of the adjoining land.</p>