

**KLONDYKE ALLOTMENTS - COMPULSORY PURCHASE ORDER
REPORT OF CHIEF EXECUTIVE**

WARDS AFFECTED: GROBY



Hinckley & Bosworth
Borough Council

A Borough to be proud of

1. **PURPOSE OF REPORT**

- 1.1 To seek member approval to make a Compulsory Purchase Order to acquire land and property interests at the land Known as the Klondyke Allotments site in connection with restoring the land to a use commensurate with its proper planning purpose, to delegate authority to the Chief Executive to take necessary steps to implement the Order.

2. **RECOMMENDATION**

- 2.1 That Council resolves:

- 2.1.1. It being satisfied that:

- (a) the acquisition of the land and interests contained in the Order (the maximum extent of which being those boundaries shown on the drawing attached to this Committee Report) is necessary to restore the land to a use commensurate with its proper planning purpose; and
- (b) the Order is proportionate in all the circumstances and that there is a compelling case in the public interest that requires the Order to be made, sufficient to justify any interference with human rights of the parties affected

to make the Hinckley Bosworth Borough Council (Klondyke Allotments) Compulsory Purchase Order 2013 (once the final form has been settled in accordance with the delegated authority set out below) and to submit the same for confirmation by the Secretary of State

- 2.1.2. to delegate authority to the Chief Executive as follows:

- (a) pursuant to the provisions of Sections 226(1)(b) of the Town and Country Planning Act 1990 (as amended), section 13 of the Local Government (Miscellaneous Provisions) Act 1976, the Acquisition of Land Act 1981 and all other relevant powers and provisions the Chief Executive, in consultation with the Chief Officer Corporate Governance and Customer Engagement and any other appropriate officer, be authorised to make, seal and submit to the Secretary of State for confirmation, an order entitled "The Borough of Hinckley and Bosworth (Klondyke Allotments) Compulsory Purchase Order 2013" ("the Order") to acquire land and other interests in respect of the land shown coloured pink on the plan at Appendix 1 to this report ("the Land") referred to as "Map referred to in the Hinckley & Bosworth Borough Council (Klondyke Allotments) Compulsory Purchase Order 2013" or in respect of such lesser areas of that land should he consider it appropriate;
- (b) to agree and adopt a Statement of Reasons (a draft of which is attached at Appendix 2) which may be subject to minor amendment(s) as required until the time the Order is made for the making of the Order in order to promote the proper planning purpose of the site;
- (c) to publish and serve upon all persons entitled thereto the Notice of the making of the Order and to authorise publication of the Order and to take all

other necessary steps to enable the Order to be confirmed by the Secretary of State;

- (d) that in the event the Order is confirmed by the Secretary of State, to serve Notices to Treat under Section 5 of the Compulsory Purchase Act 1965 and, where necessary, to serve Notices of Entry under Section 11 of the Compulsory Purchase Act 1965 in respect of the Land, or at his discretion to execute a General Vesting Declaration and in any event to take all steps considered necessary to obtain possession of the land included in the Order;
- (e)
 - (i) to continue to negotiate and attempt to negotiate with a view to agreeing terms for purchase by agreement or payment of compensation for any interests in or rights over the Land;
 - (ii) where considered appropriate, to agree terms for relocation;
 - (iii) if considered appropriate, to appoint specialist external consultants to perform or assist in the performance of these tasks; and
 - (iv) in the event that such terms are not agreed and following confirmation of the Order, to refer those matters where no agreement has been reached to the Lands Tribunal for determination.

2.1.3. To delegate authority to the Chief Executive to enter negotiations with Midland Quarry Products Ltd in order to agree the terms of a Compulsory Purchase Order Indemnity Agreement to contribute to the cost of the compulsory purchase and remediation of the Land.

3. BACKGROUND TO THE REPORT

3.1 The current unauthorised usage of the Klondyke Allotments has been a matter of concern for the Council for a number of years. The site is within both the Green Wedge and the National Forest and as such the current usage of the site is in direct opposition to its proper planning designation.

3.2 Planning enforcement action taken over the years to attempt to control the site has included:

3.2.1 The serving of a Planning Enforcement Notice on one part of the site in 2005 requiring that all hard-standing be removed from the site and the land reinstated to its previous condition through the planting of appropriate grass shrubs and seeds. This enforcement notice has not been complied with.

3.2.2 Following the failure of the owner to comply with the Enforcement Notice the Council in 2007 sought and obtained an Injunction Order in similar terms to the enforcement notice. Owing to difficulty in locating the subject of the Injunction the Council has not been in a position to enforce it although it remains extant.

3.2.3 Another area of the site has since 1986 been used as an unauthorised builders yard. A planning contravention notice was served against the property in 2007 which resulted in works being carried out to remove a proportion of the loose materials and scrap on the site although the unauthorised use continues.

3.2.4 In March 2007 a further area of the Site was served with an enforcement notice to remove all caravans and mobile homes from the site. This enforcement notice was complied with.

3.2.5 In April 2011 the owners of the entire site was made subject to a further injunction to prevent any development of the site and in particular the

bringing onto the site tarmac or other materials for the on to the land. This injunction expired in June 2011 as no breaches of the injunction occurred in this period.

- 3.3 The proper planning purpose of the site is set out in the Council's Adopted Core Strategy 2009. The site is part of both the National Forest and the Rothley Brook Meadow Green Wedge.
 - 3.3.1 Policy 9 of the Adopted Core Strategy 2009 lists the land uses which are considered acceptable within the Rothley Brook Green Wedge as Agriculture, Recreation, Forestry, Footpaths and Bridleways Burial Grounds and Nature Conservation. In addition any land use within the green wedge is required to maintain the function of the Green Wedge, and retain the visual appearance of the area.
 - 3.3.2 Policy 21 of the Adopted Core Strategy supports proposals that contribute to the delivery of the National Forest Strategy including (increasing woodland cover, enhancing biodiversity, developing a new woodland economy for timber products and wood fuel energy, outdoor recreational and sport provision and tourism developments. Only development meeting this Strategy will be supported and even then only if its siting and scale is appropriate to a forest setting the development respects the character and appearance of the wider woodland setting.
- 3.4 The current unauthorised uses of the site are not in keeping with either Policy 9 or Policy 21 and it is proposed that following the acquisition of the site a tree planting programme is carried out to ensure that the proper planning purpose of the site is met and the Green Wedge and National Forest supported properly.
- 3.5 The Council will during the Compulsory Purchase process negotiate in parallel with the current owners of the site to purchase their properties by private treaty.
- 3.6 As members will see, there is a long history to this site and concerns have been raised regularly by local members about the need to negotiate its standing and use. As a result, a number of meetings have been held in recent months, involving the Leader of the Council, local members, relevant officers and other local interests, following which this report has been produced. The report and its recommendations have the full support of that group.
- 3.7 Midland Quarry Products were also represented on the group and they have indicated that they would be willing to make a financial contribution towards the costs of compulsory purchase order, the purchase of the Land and the remediation of the Land. An indemnity agreement for these costs will be agreed by the Council prior to making the Order.
4. FINANCIAL IMPLICATIONS (KB)
 - 4.1 Based on the current position, the cost of preparing the compulsory purchase order for this case could be met internally by existing resource. However, for any ensuing public inquiry, the Council will be required to fund legal costs estimated at around £12,500.
 - 4.2 In line with the Council's Asset Management Strategy, an independent valuation has been obtained on the current site to ascertain its market value. This valuation, obtained from the Council's commissioned valuers (Sturgis Snow and Astill) has been received for £1.00, assuming there to be no prospect of any remediation works being imposed on the freehold of the site. This current valuation indicates that the

asset would hold no benefit to the net worth of the Authority and would effectively be held at surplus.

- 4.3 If the Council were to acquire the land, various costs would be incurred in making the land secure ahead of any decision on its future use. These are currently estimated to be £1,100. Further resource may be required from the Council's Estates and Asset Management officers to react to any disturbance that occurs as a result of the Council acquiring the site.
- 4.4 Potential further use for the land may include creation of a woodland area on the site. The cost of this initial planting is estimated to be £28,500, excluding any ongoing grounds maintenance work that will be required.
- 4.5 On the basis of the current value and lack of present uses it would be difficult to demonstrate strict financial value for money in acquiring the land. Because of the cost associated with its future use, acquisition may not be deemed affordable, sustainable and prudent under the terms of the Council's Prudential Treasury Management Strategy.

5. LEGAL IMPLICATIONS (AB)

- 5.1 The procedures for making a compulsory purchase order are governed by various statutes, including (but not limited to) the Compulsory Purchase Act 1965, the Acquisition of Land Act 1981 and the Town and Country Planning Act 1990.
- 5.2 Section 226(1) of the Town and Country Planning Act 1990 gives the Council power to make the a compulsory purchase order on condition that it thinks that the acquisition of the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
- 5.3 The Council is advised that the proposed compulsory acquisition of the land and interests contained in the Order (the maximum extent of which being those boundaries produced shown on the drawing attached to this Committee Report) will is required to achieve the proper planning purpose of the land in light of its designation as part of both the Rothley Brook Meadow Green Wedge and the National Forest;
- 5.4 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the European Convention on Human Rights ("ECHR"/ "the Convention").
- 5.5 The position is conveniently summarised in paragraph 17 of Part 1 of the Memorandum to ODPM Circular 06/2004, which states that a compulsory purchase order should only be made where there is "a compelling case in the public interest". The Circular makes it clear that an acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. In making this assessment, an acquiring authority should have regard, in particular, to the provisions of Article 1 of the First Protocol and Article 6 of the Convention and, in the case of a dwelling, Article 8 of the Convention. These are summarised and considered below.
- 5.6 Article 1 of the First Protocol states that:
"...Every natural or legal person is entitled to peaceful enjoyment of his possessions" and "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law..."

- 5.7 Whilst occupiers and owners in the Order Land will be deprived of their property if the Order is confirmed, this will be done in accordance with the law. The Order is being pursued in the public interest as required by Article 1 of the First Protocol. The public benefits associated with the scheme are set out earlier in this report. It is considered that the Order will strike a fair balance between the public interest in the implementation of the scheme and those private rights which will be affected by the Order.
- 5.8 Article 6 of the Convention provides that:
"In determining his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"
- 5.9 The Scheme has been extensively publicised and consultation has taken place with the communities and parties that will be affected by the Order. All those affected by the Order will be notified, will have the right to make representations and/or objections to the Secretary of State for Communities and Local Government, and to be heard at a public inquiry. It has been held that the statutory processes and associated right for those affected to pursue remedies in the High Court where relevant, are compliant with Article 6.
- 5.10 Article 8 of the Convention states that:
"Everyone has the right to respect for his private and family life, his home and his correspondence...interference is justified however, if it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for its prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others."
- 5.11 It is considered that such interferences as may occur with the pursuance of the Order are in accordance with the law, pursue a legitimate aim, namely the proper planning of the area in which land is situated and/or the protection of the rights and freedoms of others, and are proportionate having regard to the public interest that the compulsory purchase will promote the return of the site to a state in keeping with its planning purpose.
- 5.12 Those directly affected by the Order will also be entitled to compensation which will be payable in accordance with the Compulsory Purchase Code, assessed on the basis of the market value of the property interest acquired, disturbance and statutory loss payment. The reasonable surveying and legal fees incurred by those affected will also be paid by the Council (these costs will also be backed by the indemnity from Midland Quarry Products). The Compulsory Purchase Code has been held to be compliant with Articles 8 and Article 1 of the First Protocol.
- 5.13 The European Court of Human Rights has recognised in the context of Article 1 of the First Protocol that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole". Both public and private interests are to be taken into account in the exercise of the Council's powers and duties. Similarly, any interference with Article 8 rights must be "necessary in a democratic society" i.e. proportionate.
- 5.14 The Council should consider the balance to be struck between the effect of acquisition on individual rights and the wider public interest in the redevelopment of the site. The Council is advised that interference with Convention rights in this instance is considered to be justified in order to secure the economic regeneration, environmental and public benefits which the scheme will bring.

6. CORPORATE PLAN IMPLICATIONS

6.1 The redevelopment of the Klondyke Allotment site meets the Corporate Aim of creating a vibrant place to live and work by reducing the impact on the environment,

7. CONSULTATION

7.1 None specific to this report

8. RISK IMPLICATIONS

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

8.3 The following significant risks associated with this report / decisions were identified from this assessment:

| Management of significant (Net Red) Risks | | |
|--|--|-----------------|
| Risk Description | Mitigating actions | Owner |
| By not taking the actions recommended in the report, the status of the land remains unresolved and its usage is likely to continue not to comply with the requirements of the Core Strategy 2009 | Pursue the compulsory purchase of the site | Chief Executive |

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

9.1 The recommendations contained within the report present no implications with regard to equalities or rural areas. However, the wider redevelopment proposals which have been previously approved by the Council have given full consideration to equality and rural considerations. The development will be of benefit to all groups within the community and all areas of the Borough.

10. CORPORATE IMPLICATIONS

10.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

Background papers: Plan of the Site

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