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Report of the Development Department

Executive Board

Date: 13th December 2006

Subject: Hall Farm, Micklefield – Proposal for Compulsory Purchase Order

Electoral Wards Affected:

Kippax & Methley

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In
(Details contained in the report)

EXECUTIVE SUMMARY

Authority is sought to pursue a Compulsory Purchase Order (CPO) to deliver a tree belt adjoining a residential development at Hall Farm, Micklefield. The housing development was substantially completed in early 1999 - some 7-8 years on the tree belt has not been provided as the land is in a different ownership and no agreement has been reached on acquiring it from the current owners. It is required for the proper planning of the area and there is a strong planning justification for it. Residents of the development continue to press and campaign for it, with the support of local Ward Members and the MP.

A CPO is now considered necessary if this matter is to be finally resolved, although attempts to reach a settlement with the owners and developer will continue to be made. The original developer has admitted liability for not laying out the tree belt and is being pursued to indemnify the City Council in terms of the costs incurred in proceeding with a CPO.

Purpose of this Report

1.1 The purpose of this report is to:

- 1) seek authority to make a Compulsory Purchase Order (CPO) to acquire a strip of land at Hall Farm, Micklefield for the layout out of a tree belt adjoining the Hall Farm Park estate
- 2) note that an indemnity is being sought from Britannia Developments Ltd for all the costs involved in the CPO procedure and
- 3) note that in the meantime continuing efforts are being made with the various parties involved to acquire the land by agreement to enable the tree belt to be planted

2.0 Background Information

- 2.1 Planning permission was granted in March 1998 to Britannia Developments Ltd to erect a residential development on land at Hall Farm, Micklefield for 30 dwellings. The permission was subject to a Section 106 legal agreement between the Council, Britannia Developments Ltd and John and Charles Bramley (brothers who are retired farmers and owned the land at the time), dated 19th February 1998. Permission was only granted to develop the land for housing on the basis that a 10 meter wide tree belt was planted along the edge of the site where it adjoined the Green Belt (see attached plan). The agreement imposed an obligation to plant and thereafter maintain the tree belt.
- 2.2 At the time when the Section 106 agreement was entered into the farmland adjacent to the land, including the 'tree belt' land, was owned by the Bramleys. However, in 1995 they had granted an option to sell that farmland to Messrs Kerry and Hewitt. At the time the agreement was entered into it was known by the Bramleys and Britannia that Messrs Kerry and Hewitt had an option to purchase the land on which the tree belt was proposed. Messrs Kerry and Hewitt were not parties to the Section 106 agreement. They completed the purchase of the land on which they had an option in 2000.
- 2.3 The tree belt has never been planted. The housing development was substantially complete by early 1999 and the City Council has been pursuing the implementation of the tree belt ever since. Residents of the new development have been pressing for the planting of the tree belt since they moved in – a local Action Group was formed and there has been significant involvement of local Ward Members, the MP and the Ombudsman.
- 2.4 In December 2002 a report was taken to the Development Control Panel (East) about the situation and Members agreed to commence legal proceedings in respect of the breach of the obligation in the Section 106 agreement.
- 2.5 A letter before action was sent in the hope that this would prompt Britannia Developments Limited and/or Messrs Bramley (the signatories to the Section 106 agreement) to acquire sufficient interest in the belt land by negotiation with Kerry and Hewitt to enable them to comply with the agreement. No progress was made and so in January 2004 the City Council issued proceedings in the High Court against all three parties to the agreement. The proceedings have been complicated by counter claims between the Bramleys and Britannia and Britannia joining in Messrs Hewitt and Kerry as parties. Mr Kerry was successful in his application for summary judgment and is no longer a party to the proceedings.

Britannia Developments Limited conceded that they were liable to indemnify Messrs Bramley. Messrs Bramley are with the agreement of the Council no longer a party to the proceedings. Britannia have admitted that they are in breach of contract.

- 2.6 The main sticking point in resolving this matter has been the value of the tree belt land. The District Valuer has valued the belt land as agricultural land at £500. This is the value he considers would be payable if the land were obtained by way of compulsory purchase. Messrs Kerry and Hewitt contend it should be valued as residential development land and on this basis assess its value as £220,000 or more. Given such a large discrepancy it is unlikely and improbable that the Council will be able to negotiate the purchase of the belt land on reasonable terms.
- 2.7 The claim was listed for trial on 8 February 2006. The proceedings have been stayed to enable the Council to purchase the tree belt land by way of a Compulsory Purchase Order.
- 2.8 It is known that Messrs Kerry and Hewitt have ambitions to develop the wider land they acquired from the Bramleys for residential development. Outline permission was applied for and refused in October 1996 on Green Belt and access grounds. The land remains in the Green Belt and is greenfield – its development for housing would be contrary to national, regional and local policies on restricting inappropriate development in the Green Belt and developing greenfield sites before brownfield sites in more sustainable locations.

3.0 Main Issues

- 3.1 The statutory framework for acquiring land compulsorily is Section 226 of the Town and Country Planning Act 1990 as amended by Section 99 of the Planning and Compulsory Purchase Act 2004 and states:

“(1) A local authority to whom this section applies shall, on being authorized to do so by the Secretary of State, have power to acquire compulsorily any land in their area..... -

[(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land,] or

(b) (which) 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

[(1a) but a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects –

- a) the promotion or improvement of the economic well-being of their area;
- b) the promotion or improvement of the social well-being of their area;
- c) the promotion or improvement of the environmental well-being of their area.]”

- 3.2 In this case the justification for pursuing the CPO is the power set out in Section 226 (1) (b) of the 1990 Act. It is required for the proper planning of the area. The provision of the tree belt is a policy requirement under Policy N24 of the adopted

UDP where a site adjoins the Green Belt, to soften the built-up edge of development and assimilate it with surrounding countryside.

3.3 Policy N24 states;

“ WHERE DEVELOPMENT PROPOSALS ABUT THE GREEN BELT, GREEN CORRIDORS OR OTHER OPEN LAND, THEIR ASSIMILATION INTO THE LANDSCAPE MUST BE ACHIEVED AS PART OF THE SCHEME. IF EXISTING LANDSCAPE FEATURES WOULD NOT ACHIEVE THIS, A LANDSCAPING SCHEME WILL BE REQUIRED TO BE IMPLEMENTED WHICH DEALS POSITIVELY WITH THE TRANSITION BETWEEN DEVELOPMENT AND OPEN LAND”

3.4 The residential development would not have been approved without the tree belt. In the negotiation and consideration of the application the achievement of the tree belt was a core objective. Due to the nature and shape of the site it was not easily possible to produce a coherent layout and make best use of the site and incorporate the tree belt within the land which was not in the Green Belt. The development therefore was approved on the basis of a complete strip of planting along the Green Belt boundary but within the Green Belt directly adjoining the site. There are solid planning arguments therefore for the tree belt and it was required by a Section 106 obligation before permission was given.

3.5 In detail the tree belt consists of an open strip of the adjoining farmland up to 10m in width which would be planted with native trees (about 45-50 in total of horse chestnut, silver birch, hawthorn, beech, ash and double gean at selective standard size) and then maintained to ensure it is properly established and has every chance to mature and provide the softening at the built edge which is the intention of the policy. The site is on the northern side of the village of Micklefield and without the tree belt the development has a hard edge. The layout of the development is such that the houses back onto or have gables towards the green belt and are quite close to it with rear garden depths varying between 7- 15m. There is no existing landscaping or landscape features along this boundary and so the present development has no softening whatever or assimilation into the surrounding countryside but maintains a hard edge and is clearly visible at the northern end of the village. It is considered that the non provision of the tree belt has resulted in visual harm.

4.0 Implications For Council Policy And Governance

4.1 It is considered that the provision of the tree belt should be pursued. The requirement for it is a key policy objective in the adopted UDP for developments which abut the Green Belt and its non provision would send the wrong signal to developers who seek to build at the edge of the built up area. The Plans Panel in December 2002 confirmed that the non compliance should be pursued in the High Court. The local residents and action group continue to press for the implementation of the tree belt as they bought their houses on the basis that a tree belt would be planted. Ward Members and the MP are sympathetic to the position of local residents. The developer has also accepted they are in breach of the obligations they entered into as part of the grant of planning permission.

4.2 Whilst significant time have been given for the matter to be resolved by agreement between the parties this has not resulted in any substantial progress. It is considered that there is ample justification for the CPO and that progressing this may also bring matters to a sharper focus and give opportunity for the main parties

to shift their positions and reach a reasonable settlement which would enable the tree belt to be provided.

5.0 Legal And Resource Implications

- 5.1 In making a Compulsory Purchase Order, the Council should use the most appropriate power available. As the planting of the tree belt would not be development and the development which it is intending to screen has already been built, S.226 (1)(a) is not the appropriate power to use.
- 5.2 The power contained in S. 226(1)(b) is an appropriate power. The acquisition of land which seeks to bring about a situation required by a Section 106 agreement, based itself on proper planning considerations, is an acquisition which is required in order to achieve the proper planning of the area.
- 5.3 Circular advice makes it clear that Members (and the Secretary of State on appeal) must conclude that there is a compelling case in the public interest in acquiring the land. There is policy justification in terms of Policy N24 but Members should give site specific consideration to the role that the tree belt would play in the assimilation of the development into the landscape, the harm, if any, that would be caused by not providing the tree belt and whether it is necessary to acquire the land compulsorily to carry that out.
- 5.4 Members will also need to be satisfied that funding is available to carry through the acquisition and to demonstrate that it has the appropriate resources even if the land valuation put by Messrs. Kerry and Hewitt is correct. Although this may be achieved through the assessment of damages in the High Court proceedings and an Indemnity Agreement should be entered into with the Developer, members should be aware that the Developer could become insolvent and an alternative funding stream should be identified. Similarly there should be no physical impediments to implementation.
- 5.5 Acquisition by negotiation should continue to be attempted and members are advised that the making of a resolution or, indeed the CPO, does not require that these be discontinued.
- 5.6 The Landowners have a right of objection to the making of a CPO and have indicated that they will object to it. Although the Rules now allow for such an appeal to be dealt with by Written Representations it should be assumed an objection is likely to result in a Public Inquiry. If the Secretary of State confirms the Order (which is subject to challenge in the High Court) then there is likely to be a dispute about the value of the land which would be decided by the Lands Tribunal. There are therefore ongoing costs involved with pursuing a CPO. Indemnity for all of these costs is being sought from Britannia Developments Ltd.

6.0 Human Rights Issues

- 6.1 Members, the Secretary of State and the Courts will need to have regard to the Human Rights Act 1998 in considering whether there is a compelling case in the public interest for acquisition. The relevant Convention Right is Article 1 of the First Protocol which deals with the protection of property rights.
- 6.2 As indicated above, members will need to consider the planning merit of what the S.106 Agreement was seeking to achieve by requiring the tree belt, consider what, if any, harm is caused by its absence and then consider whether the provision of it

is sufficiently important as to mean that it is proportionate to forcibly deprive the landowners of the land in order to provide it.

- 6.3 In this case there was substantial merit in requiring the tree belt to fulfill an important planning function and there is clear harm in its non provision. Access to the remainder of the land owned by Messrs Kerry & Hewitt for maintenance purposes is provided for by the approved layout with a gap through the tree belt where the current access road adjoins the Green Belt edge. There is no immediate or longer term prospect of the remainder of the land being developed for residential purposes as it is in the Green Belt and is also Greenfield. By its very nature the Green Belt designation of the land gives long term protection against inappropriate development.

7.0 Conclusions

- 7.1 The provision of the tree belt is important in this particular case and considerable time and effort has already been expended by officers in pursuing this matter. Given the impasse that has been reached it is considered that the only way of making further progress on this matter is to pursue a CPO. There is clear justification for it but it is not without risk. It is likely that the CPO will be objected to and will need to be confirmed by the Secretary of State. If successful the value that is set on the land will ultimately be determined by the Lands Tribunal if challenged.
- 7.2 Whilst Britannia Developments Ltd have admitted they are in breach of contract it will be important to ensure an indemnity agreement is in place with them before making the CPO to limit the costs of the Council. At present it is estimated that the costs of pursuing a CPO through an Inquiry would be in the region of £12,500 - £25,000, the costs of planting the tree belt would be about £6,700 and the costs of maintaining the tree belt for the next 20 years would be about £10,800. The biggest unknown is the value of the land given the large difference between agricultural and residential value. The risk therefore to the Council should Britannia Developments Ltd become insolvent would be substantial if ultimately a residential land value was deemed appropriate by the Land Tribunal.

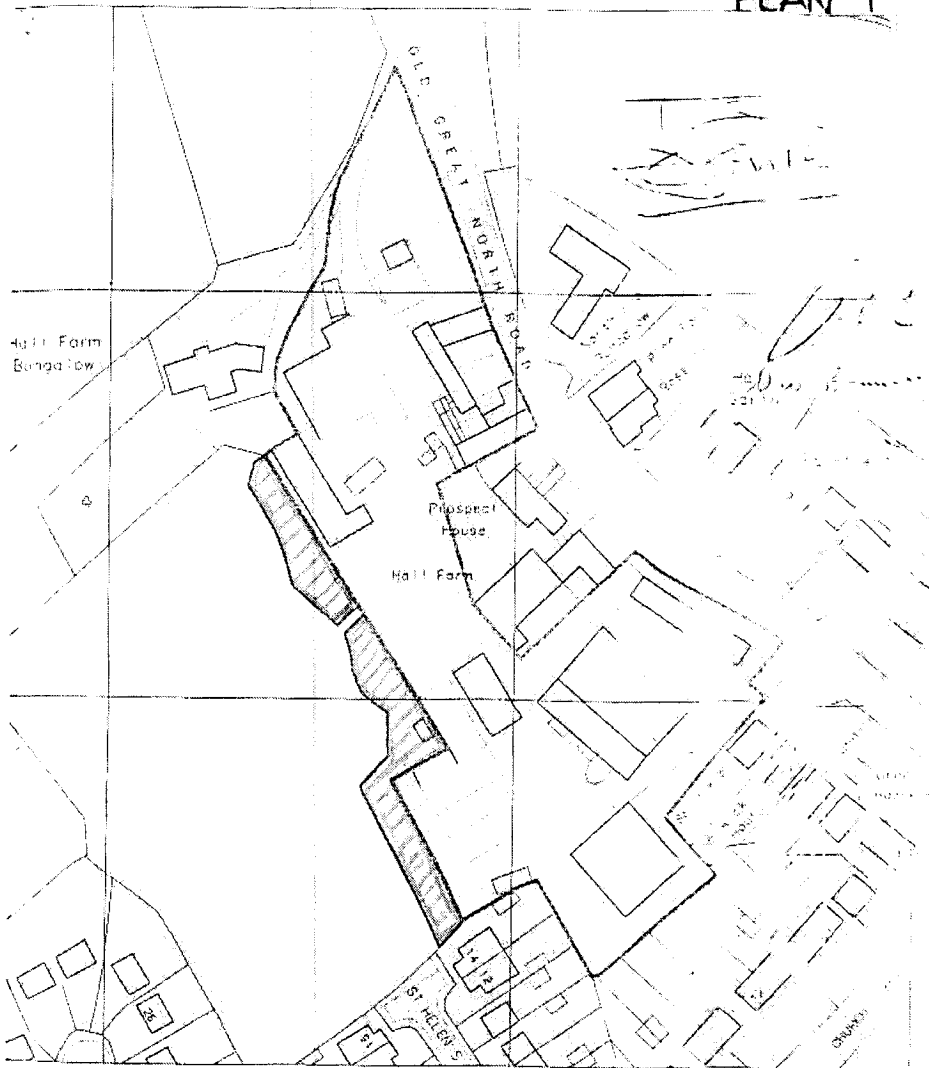
8.0 Recommendations

- 8.1 That the Executive Board resolves that subject to the prior completion of appropriate indemnity and development agreements and the identification of an alternative funding stream, the Council makes a Compulsory Purchase Order under the provisions of Section 226(1)(b) of the Town & Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of land within the area shown on Plan No 1 attached for the purpose of securing the planting of a tree belt

That officers be authorised to take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order including:

- (i) the publication and service of all notices and the presentations of the Council's case at any Public Inquiry;
- (ii) approving the acquisition of interests in land within the compulsory purchase order either by agreement or by way of compulsory powers; and
- (iii) approving agreements with land owners setting out the terms for the withdrawal of objections to the Order, including where appropriate seeking exclusion of land from the Order and/or making arrangements for relocation occupiers.
- (iv) to authorise officers to enter into negotiations and to provisionally agree the terms of an appropriate indemnity agreements and any other agreements required to facilitate the scheme on detailed terms to be approved by the Director of Development.

PLAN 1




**TOWN & COUNTRY PLANNING ACT 1990
SECTION 106 AGREEMENT**

At _____ HALL FARM,
OLD GREAT NORTH ROAD
MICKLEFIELD
LEEDS, LS25

Application No. _____ 33/158/97/FU
33/177/97/L1
33/178/97/FU

Location _____

Tree and Shrub Belt _____



LEEDS
CITY COUNCIL
DEPARTMENT OF PLANNING

PLAN No. GC 5179
 PREPARED BY S R H
 CHECKED BY L A
 SCALE 1:1250
 DATE 30/01/1998
 GRID REF SE 4333 NH
 NORTH ▲

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