



NOT FOR PUBLICATION

Appendix B - Exempt under Access to Information Procedure Rules 10.4.(1)(2)(3) and (5).

Report of the Director of Development / Chief Officer (Legal, Licensing and Registration).

EXECUTIVE BOARD

Date: 2 September 2008

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

Electoral wards affected:

Kippax & Methley

Specific implications for:

Ethnic minorities

Women

Disabled people

Narrowing the gap

Eligible for call In

Not eligible for call in

(details contained in the report)

Executive Summary

On 13 December 2006 Executive Board resolved that, subject to the prior completion of appropriate indemnity and development agreements and the identification of an alternative funding stream, the Council should make a Compulsory Purchase Order(CPO) in respect of land at Hall Farm, Micklefield. It has not been possible to obtain the indemnity sought, and it is now considered necessary to proceed without the benefit of such an indemnity for the reasons set out in this Report.

1.0 Purpose of this report

1.1 The purpose of this report is to seek Executive Board approval to proceed with a CPO to acquire a strip of land at Hall Farm, Micklefield for the laying out of a tree-belt adjoining the Hall Farm Park estate. The provision of the tree-belt on the green belt was a planning requirement in the development of the estate and included within a Section 106 agreement that the Council was a party to when permission for the estate was granted in 1998. Legal proceedings have been taken in the High Court by the

Council over the non-compliance of the developers to deliver the relevant provisions of the Section 106 agreement. The proceedings were stayed in January 2006 to enable the Council to purchase the tree belt land by way of a CPO.

2.0 Exempt Marking

- 2.1 The Report is marked as exempt under the Access to Information Procedure Rules 10.4.(1)(2)(3) and (5). Rule 10.4(1) exempts information relating to any individual and 10.4(2) exempts information which is likely to reveal the identity of any individual. The Appendix makes reference to the situation of an individual affected by the present situation. Rule 10.4(3) exempts information relating to the financial or business affairs of any particular person (including the authority holding that information) and Rule 10.4(5) exempts information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. The Appendix contains an analysis of the Council's current legal position and proposed course of action for resolution through court proceedings. In each case the information is exempt if and so long, as in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is submitted that such is the case at the present time.

3.0 Background information

- 3.1 A Report to the Executive Board meeting of 13 December 2006 set out the background to the requirement to obtain the land at Hall Farm, Micklefield. That Report is attached as Appendix A.

4.0 Main issues

- 4.1 It will be seen from the earlier Report (paragraph 1.1 (3)) that efforts were being made with the various parties to acquire the land in question by agreement. Those efforts continued over a lengthy period of time and involved attempts to set up a formal mediation and did lead to a meeting on site on 27 June 2007 at which the parties and their legal representatives were present.
- 4.2 Following the meeting on 27 June 2007, it was anticipated that the solicitors for the land owners and the developers would enter into meaningful discussions which would lead to the purchase of the land for the purpose of instituting the tree-belt. Unhappily this outcome has not been achieved.
- 4.3 At the same time the Council's solicitors, in accordance with the decision of Executive Board have sought to obtain the required indemnity from the developers. Again, unhappily, this has not been achieved.
- 4.4 In short, all of the efforts which have been directed to advancing a settlement of the problem have proved to no avail.
- 4.5 The residents have raised their complaints with the Ombudsman and there has been ongoing correspondence between the Council and the Ombudsman. The content of this correspondence is contained in Appendix B of this Report. Unless a CPO is obtained and a tree-belt laid out on the acquired land the original conditions imposed on the planning permission will have been defeated. There is no good reason why the developer did not plant a tree-belt as part of the development. Indeed the developer, Britannia Developments Ltd, have admitted in court that they are in breach of contract with the Council. Following the conclusion of the CPO the amount of damages to be sought from the developers in the on-going court proceedings the stay in the High

Court can be lifted and a Schedule of Loss will be served on the developers by the Council and vigorously pursued through the Court.

5 Implications for council policy and governance

- 5.1 There were good planning reasons for the requirement of a tree-belt which are detailed in the earlier Report. Those reasons have not diminished over time and there remains the need for the establishment of a tree belt.

6. Legal and resource implications

The Council will need to initially fund the CPO process which in all likelihood will involve a Public Inquiry followed by a referral to the Land Valuation Tribunal to establish a value for the land in question. The amount at which the land is valued would then have to be paid by the Council. As is set out in paragraph 2.6 of the earlier Report there is a considerable difference of opinion as to the valuation of the land. These sums would all be sought by way of damages from the developer, who has already accepted liability for breach of contract. The expectation would be that the Council would recover the vast amount of the expenditure to which it has been put although it has to be accepted that given the uncertainty of court and tribunal process there could be no guarantee as to the amount of money that would be recovered. It must also be borne in mind that any sum awarded can only be recovered if the party ordered to pay has the resources to be able to meet their commitments. The current economic climate means that there is always some risk that a developer would not be able to meet any order made against them, although there is no evidence to suggest that might be the situation in this particular case. On a worst case scenario the Council could face a liability of approximately £300,000. That is if the valuation was in accordance with the landowners claim and nothing was recovered from the developer. On a best case scenario the Council could face a liability of £50,000. That would be the amount of unrecoverable costs following a successful purchase at the Council's valuation. Paragraph 7.2 of the earlier Report sets out the estimated costs of the CPO and the tree planting and maintenance costs in more detail. Provision in the capital programme will be assessed when the capital programme is reviewed in February 2009.

7. Conclusions

Given the current situation with regard negotiations and the ongoing court proceedings the only way for the tree-belt to be established is by proceeding with a CPO.

8. Recommendations

- 8.1 That Officers be authorized to take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order

Background Papers

- Report to Executive Board on 13th December 2006 entitled, 'Hall Farm, Micklefield – Proposal for Compulsory Purchase Order'.