



Belfast City Council

Report to:	Strategic Policy & Resources Committee
Subject:	Land at McClure Street
Date:	10 December 2010
Reporting Officer:	Gerry Millar, Director of Property & Projects - Ext 6217
Contact Officer:	Cathy Reynolds, Estates Manager - Ext 3493

Relevant Background Information	
1.1	The Council owns a long linear strip of land at McClure Street off Ormeau Road, as shown on the attached plan (Appendix 1). This land (together with other lands located opposite) was transferred to the Council by the Department of the Environment in 1987 for the purposes of open space & landscaping.
1.2	The land which adjoins the railway, extends to approximately 0.95 acres and is currently used as open space/landscaping.
1.3	Members will be aware that a number of reports were previously taken to Committee over the past few years regarding the potential disposal of this land. There is a long history of decisions in relation to this land and in order to understand the background; a summary of the main decisions is attached at Appendix 2.
1.4	The owner of an adjoining office block fronting onto Ormeau Road has also recently enquired about the possibility of acquiring a portion of the subject lands to extend his existing car park which fronts onto McClure Street.

2	Key Issues
2.1	<p data-bbox="325 264 544 297"><u>Planning Issues:</u></p> <p data-bbox="325 331 1385 432">In dBMAP the site is zoned as 'open space' although this is 'for information only'. The Council objected to this zoning on the basis that it should be identified as land available for housing.</p> <p data-bbox="325 465 1385 801">Planning advice has recently been sought from Planning Consultants who have advised that the preliminary view of the BMAP team is that an application for housing should not raise matters of prejudice or prematurity and that the key planning policy document would be PPS 8 'Open Space, Sport & Outdoor Recreation'. In light of the preliminary view of the BMAP team and the fact that PPS 8 is the key planning policy document the consultants are of the view that there is no particular advantage (in planning terms) in awaiting the outcome of the BMAP process. Discussions have also recently been held with Planning Service in relation to any potential for obtaining planning approval in view of the 'open space' designation.</p> <p data-bbox="325 835 1385 969">PPS 8 incorporates the presumption against the loss of existing open space but it also provides for an exception where <i>'it is clearly shown that redevelopment will bring substantial community benefits that decisively outweigh the loss of open space'</i>.</p> <p data-bbox="325 1003 1385 1507">Advice given by the planning consultants indicates that it may be possible to consider this exception test in light of the fact the site was previously used for housing; that it's public value as open space is limited because of its nature (linear site) and context (located between a railway embankment and a road); that there is an area of better quality open space nearby i.e. the open space to the south of McClure Street. However any proposed development would have to bring substantial community benefit to outweigh the loss of open space and the view of the consultants is that the provision of, for e.g. social housing, would deliver such benefits. On the basis of both the consultant's advice and following discussions with Planning Service it is considered that the test of substantial community benefit is highly unlikely to be met by the provision of private housing. If a planning application is submitted for social housing or other type of development of a community nature it would have to be considered on the basis of this exceptions test in terms of the substantial community benefits it might bring.</p> <p data-bbox="325 1541 1385 1742">However, as well as the planning policy issues there are other hurdles that would have to be overcome in terms of the physical and technical constraints of developing on this long linear site. As part of any planning application an acoustic report (in light of the proximity of the site to the railway line) and an engineering report (due to proximity of the railway embankment and railway line) are also likely to be required.</p> <p data-bbox="325 1776 1385 1910">In addition, PPS 7 Addendum, issued in August 2010, provides additional planning policy to protect areas of established residential character and will consider issues such as existing density in the area in terms of any new planning applications.</p>

2.3

Restrictions on Sale:

Previous advice from VLA (now LPS) indicated that the inclusion of an exclusively social housing restriction would reduce the sale price of the land in the open market. This was at the peak of the market at a time when there was a strong demand from private housing developers and a resultant recognisable difference in values between private and social housing. In the current market there is, however, very limited demand from private housing developers and social housing is often the only demand in the open market for residential sites. This, together with a significant reduction in values overall for all house types, has resulted in a situation in the current market where there may in fact be little, if any, difference between the value of the land for social or general housing. However this will not be known until the land is marketed (if a decision is made to offer for sale on the open market).

From an audit perspective, and given that the Council does not have a housing function, then in order to comply with the Local Government Act (NI) 1972 best price obligation, it is recommended that the land is marketed without any restriction as to social housing. By imposing a user restriction (particularly where the use is a function not carried out by the Council) which might suppress the open market value this could potentially result in the sale price not complying with disposal at best price as required in the LGA (NI) 1972. In such instances approval would be required from the DOE. In addition, if the Council are too prescriptive this will limit the potential end uses which might be desirable from the Council's perspective. If the use is not restricted to merely social housing this would also allow for any other potential uses that might fall into the 'substantial community benefit' test. Social housing providers/housing associations would however be free to bid accordingly.

However, whilst the marketing particulars may not specifically provide for such a restriction, they could refer to the current planning policies and planning advice which would determine the end use. Any bids subsequently received will therefore reflect the planning position and likewise so too will the value.

2.4

Title Restrictions:

The subject land was acquired by the Council from DOE and is subject to a covenant that restricts use of the lands to landscaping and open space. At the time of the previous marketing exercise DSD (as successor to DOE) had agreed to a relaxation of this user covenant subject to certain conditions, including payment to them of 50% of the sale price. DSD have recently been contacted again to ascertain if a similar arrangement would apply in the event that the Council decides to remarket the land.

2.5

Value:

Members will be aware that there has been a marked downturn in the property market. Whilst previous marketing resulted (at the peak of the property market) in a high offer for the land based on a high density development, this was subject to obtaining planning, which, in light of current planning policy and the technical and physical constraints, now seems highly unlikely.

Given the current planning restrictions and the technical and physical constraints in developing this site (and this is assuming that planning might in fact be

	<p>obtainable) as well as the marked downturn in the property market, it must be emphasised that the current open market value of the site will be significantly lower than the offers received back in 2006. These offers were based on high density apartment schemes and were subject to planning. In addition, if there is a similar arrangement as agreed previously with DSD in relation to the relaxation of the use covenant then the Council would only receive 50% of the proceeds.</p> <p>2.6 <u>Council requirements:</u></p> <p>The Client Services Committee, at their meeting back in 17 August 2004, declared the land surplus to Council requirements (and agreed to place on the open market) although the land was obviously not subsequently sold and continues to be used as informal open space.</p> <p>2.7 <u>Options:</u></p> <p>In light of the above comments, the following options can be considered:</p> <p><u>Option 1: Retain the land in Council ownership:</u> Certain benefits will be derived from continued use as informal open space. However, there is an area of better quality open space directly opposite and its value as open space is diminished somewhat in that it is located between a railway line and a road and is also subject to fly tipping.</p> <p><u>Option 2: Offer for sale on the open market with use restricted to social housing:</u> As outlined above, restricting the use to a non Council function, and to a use that may potentially suppress the open market value may potentially cause problems in terms of demonstrating that the best price (or best terms) has been obtained in accordance with the requirements of the LGA (NI) 1972. It also limits other potential end users that may in fact be desirable from the Council's perspective and which could potentially satisfy the 'substantial community benefit' exception test in terms of PPS 8. Given this planning policy issue, however, it is possible that the potential end use may well be social housing but this is essentially a matter for the market to determine in line with the planning restrictions.</p> <p><u>Option 3: Council apply for planning approval for a housing scheme:</u> Planning Service and the planning consultants have indicated that a full planning application as opposed to an outline planning application is likely to be required Whilst this might bring more certainty in terms of any future marketing of the site it nonetheless restricts the use and design to a particular scheme only. It may limit the market which again may have an impact on value. In addition any future end user is unlikely to use the same housing layout/design as per any application made by the Council. Individual Housing Associations, for e.g. have very specific requirements in terms of layout and design etc and would therefore still have to make a new planning application in due course to meet their own specific requirements.</p> <p><u>Option 4: Advertise for sale on the open market, free of restrictions as to future use:</u> This option would accord with the Council's requirements to obtain best price (or best terms) and may allow the Council to consider other potential end uses that might be desirable from a community or social perspective (subject to planning). The sales marketing particulars could highlight the planning policy restrictions. particularly in terms of PPS 8, and the exceptions test in terms of</p>
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	<p>'substantial community benefits to decisively outweigh the loss of open space' Any interested parties would need to have regard to this and in light of the current economic climate and depressed property market it is considered highly unlikely that developers will be as willing to simply take a chance in getting planning permission for a development that does not accord with the current planning policies. It is however also recommended that the Council makes any sale that is subject to planning time bound i.e. give the purchaser a specified time to obtain planning and complete the sale.</p> <p>Option 4 above is recommended.</p>
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3	Resource Implications
3.1	<p><u>Financial:</u></p> <p>Unknown at this stage until the land is marketed and planning approval obtained. DSD may seek 50% of sale proceeds for relaxation of the user covenant.</p>
3.2	<p><u>Human Resources</u></p> <p>Staff Resource, primarily within Estates Management Unit to progress.</p>
3.3	<p><u>Asset & Other Implications</u></p> <p>Whilst the land is currently used as open space there are problems of dumping and anti social behaviour at this location. There is an area of better quality open space directly opposite. Development of these lands at a suitable density appropriate for the locality and with good quality design should result in an improved asset for the benefit of the local area.</p>

	Equality and Good Relations Implications
	None at this time.

	Recommendations
	<p>Members are asked to indicate, in principle, if they wish to progress on the basis of Option 4, i.e. that the lands are to be re-marketed, free of restrictions as to future use and on the basis that any disposal would be time bound. If Members wish to progress on this basis, then a report will be brought back to advise on the marketing price and to advise of the requirements of DSD in releasing the covenant</p>

Decision Tracking
Director of Property & Projects to bring a report back to Committee within 2 months to advise re marketing.

Key to Abbreviations
VLA: Valuation & Lands Agency LPA: Land & Property Services LGA: Local Government Act dBMAP: Draft Belfast Metropolitan Area Plan

Documents Attached
Appendix 1 : Location Map Appendix 2 : Summary of previous Committee decisions

APPENDIX 2:

SUMMARY OF PREVIOUS COMMITTEE DECISIONS RE: LAND AT MCCLURE STREET:

- Parks & Amenities Sub Committee 11/2/2003: Agreed to not grant approval dispose of land to BIH Housing Association.
- Client Services Committee 18/2/2003: Agreed to adhere to decision of 11/2/2003 not to sell.
- Council 1/4/2003: Agreed to take back to Sub Committee
- Parks & Amenities Sub Committee 8/4/2003: Agreed that discussions take place with BIH Housing Association for purpose of development of social housing, subject to a legal opinion from the Director of Legal Services.
- Parks & Amenities Sub Committee 10/8/2004: Agreed to dispose of the site for £450,000 (as valued by VLA) to BIH subject to BIH obtaining planning approval to develop for social housing.
- Client Services Committee 17/8/2004: Agreed to amend decision of Parks & Amenities Sub Committee of 10/8/2004 to provide that the lands be declared surplus to Council requirements & placed on the open market and seek expressions of interest for development of the site for social housing purposes.
- Parks & Recreation Sub Committee 9/8/2005: After placing on open market the two best offers received were for student accommodation and for a mixed housing scheme. The Committee were advised that both bids appeared to be outside of the terms on which the land has been marketed. It was agreed that expressions of interest be sought through public advertisement for the development of the site for both social & private housing.
- Community & Recreation Committee 16/8/2005: Agreed that expressions of interest to be sought via public advertisement was to be subject to a minimum of 20% being advertised for social housing purposes.
- Council 1 Sep 2005: An amendment to provide that the proposed development is used for social housing purposes only, was voted on and lost.
- Parks & Cemeteries Sub Committee, 9 May 2006: Agreed to accept the highest offer following marketing of £3,401,000 by Hagan Homes.
- Community & Recreation Committee, 16 May 2006: Agreed to refer that matter back to the Parks & Cemeteries sub Committee to enable Hagan Homes, together with the company which had submitted the second highest bid, Big Picture Ltd to attend a future Committee meeting to present their proposals. Both developers were proposing high density apartment schemes, but these were subject to planning.
- Parks & Cemeteries Services Sub Committee 13 June 2006: Further consideration of the decision of 9 May '06 approving sale to Hagan Homes. Agreed to defer consideration to enable a further legal opinion to be obtained from the Director Legal Services.
- Special Meeting of Community & Recreation (Parks & Cemeteries Services) Sub Committee 7 Aug 2006: Consideration of legal advice & relevant background information. This included advice that if the price obtained for land is artificially depressed by a restriction the Council imposes on the future use of the land, then the Council must refer the proposed disposal to DOE for approval in accordance with the LGA (NI) 1972. VLA had also indicated that they would estimate that the current 20% Social Housing criteria could have some small impact upon value.

- Agreed to accept the highest offer received from Hagan Homes of £3,401,000 (which was subject to obtaining planning permission)
- Community & Recreation Committee 21 August 2006: Agreed to refer matter back to Parks & Cemeteries Services Sub Committee.
- Parks & Cemeteries Services sub Committee – 8 September 2006: Further consideration of 7 August 2006 decision. The published marketing criteria had identified a minimum threshold of 20% for social housing. Legal opinion provided from Senior Counsel, Mr Stephen Shaw Q.C, who advised that he failed to see how the Council, in the process they were involved in at that time, could move away from the highest conforming bid placed. After a proposal to rescind the decision of 9 May 2006 was voted on and lost, the Sub Committee agreed to affirm its decision of 9 May '06 to accept the highest offer received from Hagan Homes at £3,40,000
- Community & Recreation Committee 19 September 2006: Agreed to rescind the decision of the Parks & Cemeteries Sub Committee of 9 May 2006 and requested that officers prepare a report on the future disposal of the land with provision of social housing as the preferred option and that views of the local communities within the area be sought.
- Council 2 October 2006: agreed that the minute of 19 September 2006 be taken back to Committee for further consideration.
- Community & Recreation Committee 17 October 2006. Agreed to affirm its decision of 19 September 2006.
- Strategic Policy & Resources Committee 13 June 2008: Report on potential disposal of a number of Council assets including the subject land at McClure Street.