

Appendix 2

Greenway Community Gateway Update

The Committee was reminded that the Council, as part of the City Investment Strategy, had agreed to co-ordinate the acquisition of lands to enable the Greenway Community Gateway to proceed. The Council would acquire rights over the land needed for the Greenway and would be responsible for the installation and maintenance of the land and any services on it. The Gateway would have to be accessible for 40 years to comply with the City Legacy Fund Letter of Offer, although the intention was to secure rights for longer if possible. In July, the City Legacy Fund had agreed to the Council becoming the employer and the contract for the installation of the Greenway had been awarded to JAL/Gallford Pty. The Project Manager was liaising currently the programme of work with the contractor.

It was reported that two areas of land had been identified as being required to help complete the Greenway route and associated landscaping. The first was an area of 26 square metres of land at the Knock Dual Gateway adjacent to Laborum Physical Fitness and Council officers had agreed, subject to the Committee's approval, to purchase from Andrew Miller and Cheryl Leitch an easement to create access over their land at a cost of five hundred dollars. The second was an area of 0.95 acres of land at 5077 Road to the south-west of the Knock Dual Gateway. Subject to the Committee's approval, Council officers had agreed to purchase the land from the Northland Island Housing Executive for the sum of 25.10. The purchase was subject to the approval of the Board of the Housing Executive.

The Committee granted approval for the purchase of the two areas of land as outlined above.

Land at McClure Street

The Committee considered the undernoted report:

"1. Relevant Background Information

- 1.1** The Council owns a long linear strip of land at McClure Street off Ormeau Road. 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 and 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 has been circulated.

- 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 Planning Issues:

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.

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.

PPS 8 incorporates the presumption against the loss of existing open space but it also provides for an exception where 'it is clearly shown that redevelopment will bring substantial community benefits that decisively outweigh the loss of open space'.

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 its 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.

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.

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.

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 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.

2.6 Council requirements:

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.

2.7 Options:

In light of the above comments, the following options can be considered:

Option 1: Retain the land in Council ownership: 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.

Option 2: Offer for sale on the open market with use restricted to social housing: 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.

Option 3: Council apply for planning approval for a housing scheme: 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.

Option 4: Advertise for sale on the open market, free of restrictions as to future use: 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 '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.

Option 4 above is recommended.

3. Resource Implications

3.1 Financial

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.

3.2 Human Resources

Staff Resource, primarily within Estates Management Unit to progress.

3.3 Asset and Other Implications

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.

4. Equality and Good Relations Implications

None at this time.

5. Recommendations

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.

6. Decision Tracking

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

7. Key to Abbreviations

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

After discussion, it was

Moved by Councillor Hartley,
Seconded by Councillor Lavery,

That the Committee agrees to adopt Option 1 as set out in the report, that is, to retain the land in Council ownership.

On a vote by show of hands four Members voted for the proposal and nine against and it was accordingly declared lost.

Further Proposal

Moved by Councillor McCarthy,
Seconded by Councillor Stoker,

That the Committee agrees to adopt Option 4, that is, to advertise the site for sale on the open market, free of restrictions as to future use.

On a vote by show of hands ten Members voted for the proposal and four against and it was accordingly declared carried.

