

TAUNTON DEANE BOROUGH COUNCIL

EXECUTIVE - 22 OCTOBER 2003

Report of the Chief Solicitor

This matter is the responsibility of Executive Councillor C Bishop

Proposed Compulsory Purchase Order (CPO) in respect of footpath link at Craig Lea

Executive Summary

The purpose of this report is to consider the request from the Planning Committee of the 1 October 2003 that a CPO be made in respect of land at Craig Lea, Taunton to enable a footpath link to be re-established, together with the making of a request to the Council for a supplementary estimate of £5000 to finance it.

Background

At its meeting on the 30 July 2003 the Planning Committee resolved to recommend to the Executive that a CPO be made under the Town and Country Planning Act to acquire a piece of land at Craig Lea, Taunton to enable a footpath link to be re-established, and a request be made to the Council for a supplementary estimate of £5000 to finance the making of the proposed order.

Following the initial consideration by the Planning Committee two further factors arose, on the basis of which the responsible Executive Portfolio Holder referred the matter back to the Planning Committee for further re-consideration. These issues were the receipt of a further representation from the Police, and concerns that had arisen over the likely cost. Both the initial issues and the two additional factors are set out in detail in the two reports to the Planning Committee meetings of the 30 July 2003 and 1 October 2003 which are appended hereto.

At its meeting on the 1 October 2003 the Planning Committee resolved to endorse its recommendation to the Executive made at the meeting of the 30 July 2003.

Conclusion

The Executive is therefore required to consider the Planning Committee's request of the 1 October 2003:

1. To authorise the making of a Compulsory Purchase Order under S226 of the Town and Country Planning Act 1990 to acquire the land comprising the former footpath link adjacent to 36 Craig Lea, Taunton to secure a public footpath link between Craig Lea and the adjacent public footpath and to secure the objectives of RPG10 and PPG 13, policies STR1 and 42 of the Somerset and Exmoor National Park Structure Plan Review and Policy H1 of the Taunton Deane Local Plan Revised Deposit which is necessary to achieve the proper planning of the area, and
2. To request the Council for a supplementary estimate of £5000 to finance the same.

Chief Solicitor

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PLANNING COMMITTEE - 1 October 2003

Report of the Chief Solicitor

Miscellaneous Item

FOOTPATH ADJACENT TO 36 CRAIG LEA, TAUNTON

Background

This Committee has twice considered the question of the provision of a footpath link adjacent to 36, Craig Lea, Taunton linking the new development at Craig Lea to an existing public footpath known as the Cinder Track and running north/south from Turner Road to Greenway Road.

In November 2002 the Committee resolved to take enforcement action to secure the removal of a bank and fence panel, which had been erected along the boundary line between the footpath link and the Cinder Track, in order to re-instate the footpath that had been blocked off.

At its meeting on 30 July 2003 the Committee was advised that enforcement action had been taken but had not resulted in securing the re-instatement of the footpath link into the Cinder Track. The Committee was advised that the only way to secure this would be by the compulsory purchase of the land comprising the footpath and its subsequent transfer to the Highway Authority. The Committee therefore requested the Executive to authorise the making of an appropriate Compulsory Purchase Order (CPO) to purchase the land, which would enable the re-instatement of the footpath, and to request the Council to make a supplementary estimate of £5000 which was the estimated cost of doing so.

The matter was referred to the Executive Councillor for Planning Policy and Transportation but, in the meantime, two additional factors which have a bearing on the proposal have arisen.

Firstly, a further representation has been received from the Police, expressing concern at the decision to seek the re-instatement of the footpath and asking the Council to re-consider its decision in the light of its duties under Section 17 of the Crime and Disorder Act. Secondly, when the matter was previously considered by the Committee, members of the public at the meeting and written representations received, suggested that the figure could be well in excess of the estimate of £5000 if all those who lived in Craig Lea and considered themselves to be adversely affected made a claim.

In those circumstances the Executive Councillor has referred the matter back to the Planning Committee, asking that the Committee be further advised in respect of both issues, and that in the light of such further information, they re-consider their recommendation to the Executive.

History of the site

In 1991 the Somerset County Council granted outline planning permission for the residential development of the former Bishop Fox's School site. Subsequently reserved matters applications were sought by two developers in respect of different parts of the site. The area which was to include Craig Lea was subject to a reserved matters application by David Wilson Homes in 1995. That application was approved on 9 November 1995 and the approved plan showed a footpath link running from the proposed development (adjacent to what is now 36 Craig Lea) into the adjacent public footpath known as the Cinder Track.

The development subsequently proceeded and was essentially completed by the end of 1997. The roads, footpaths and the footpath link in question were all constructed to an adoptable standard but when the Section 38 Highways Act Agreement was considered the Developer did not propose the footpath link for adoption. The footpath link has therefore never been adopted but was used for a period of several years without complaint.

However, in February 2001 a letter was received from David Wilson Homes expressing concerns about the level of vandalism and crime associated with the footpath link and asking if the footpath could be "stopped up" and the area of land over which the footpath ran transferred to the owner of the adjacent property.

The Planning Officer advised that planning permission would be needed to take the footpath land into the adjacent garden area. At the same time however, approaches were made to the Community Safety Officer from the Neighbourhood Watch, the local Beat Officer and a local resident, requesting that the footpath be closed because of the level of vandalism and crime associated with the footpath link. She in turn referred the matter to the County Council as Highway Authority asking that the request be investigated and an assessment made as to whether the link needed to be retained. The Highway Authority confirmed to David Wilson Homes that as the footpath did not have definitive status, and in view of the representations received, they would have no objection to its closure.

David Wilson Homes then closed off the link with an earth bank and fence and transferred the area of the footpath to the adjacent home-owner. Complaints immediately arose that the footpath had been blocked. This led to the taking of enforcement action in January 2003 requiring the removal of the fence and bank blocking the footpath. This was done but was replaced by a hedge, which is not subject to planning control.

The matter was therefore referred to the Committee again in July 2003 when the Committee was advised that the enforcement action had not been successful in securing the re-opening of the footpath link and that the only way to secure this would be by the compulsory purchase of the land. An estimate of the likely costs of such action was put at £5000. The Committee resolved to recommend the Executive to authorise the making of the necessary CPO and to request the Council to make a

supplementary estimate of £5000 to fund this action. A copy of that report is appended (**APPENDIX A**) setting out the recommendation and the reasons for it.

The current position

Since that decision was made, the Sector Commander at Taunton Police Station has written in support of the footpath remaining closed and asking the decision to be revisited “taking into consideration Section 17 of the Crime and Disorder Act”. No further evidence of the level of crime or vandalism was submitted with the letter.

Also at the meeting of the Committee on 30 July during representations made to the Committee, doubts were cast as to the accuracy of the figure of £5000, with local residents indicating that all those people living in Craig Lea who felt they would be adversely affected would make substantial claims in the event that a CPO was successful.

The Executive Councillor feels that in view of the further representations from the Police, and the need for more detailed information concerning the likely level of compensation, the Committee should be asked to re-consider their recommendation taking into account the additional information.

The Crime and Disorder Act

Section 17 of the Crime and Disorder Act states as follows:-

“Without prejudice to any other obligation imposed on it, it shall be the duty of each authority.....to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area”.

Members should therefore take into account the representations received from the Police, the Neighbourhood Watch and the local residents as to the level of petty crime and vandalism which has been experienced whilst the footpath link was open.

Representations

At the meeting on the 30 July it was reported that by the date of the meeting 100 letters objecting to the making of the CPO and hence the re-opening of the footpath had been received, including a representation from the Neighbourhood Watch. The vast majority of these said that problems of petty crime, vandalism and anti-social behaviour which they reported suffering whilst the footpath was open, had all but disappeared since the closure of the footpath. The comments from the local Police Constable were also appended to the report.

Further, it was reported that 54 letters in support of the CPO and hence the re-opening of the footpath had been received, generally citing the useful addition the footpath made to the footpath/cycleway network and the fact that the footpath was part of the

original approved plan for the development. One additional letter in support of re-opening has been received since the Committee meeting.

The likely level of compensation

The figure of £5000 referred to as the likely compensation level in the earlier report was based on the legal costs of a one day Public Inquiry for both the Council and the land owner estimated at £4000, together with compensation of £1000 to the landowner for loss of the land.

However, given the level of interest in the proposal it is possible that a Public Inquiry would last for more than one day, which would increase legal costs on both sides.

At the meeting in July it was also suggested that all those living in Craig Lea who would consider their properties adversely affected by the provision of a footpath would make a claim for compensation under the Land Compensation Act 1973 on the basis that there would be the creation and use of a path where none now exists.

Whilst I believe that such claims can be refuted on the basis that the footpath forms part of the approved plans and all those who have purchased have bought with knowledge of that, clearly if such claims are made in large numbers there will be a cost involved in refuting such claims, even if none are payable.

Whilst it is not possible to estimate the likely additional costs at this stage, it is clear that the figure of £5000 is likely to be exceeded if the matter goes to a Public Inquiry and that a request for a further supplementary estimate may well be necessary.

The resolution of 30 July 2003

The resolution of the Committee on the 30 July 2003 stated:-

The Executive be recommended:-

- (1) to authorise the making of a Compulsory Purchase Order under Section 226 of the Town and Country Planning Act 1990 to acquire the land comprising the former link path adjacent to 36 Craig Lea, Taunton to secure a public footpath link between Craig Lea and the adjacent public footpath (the Cinder Track) and to secure the objectives of RPG10 and PPG13, Policies STR 1 and 42 of the Somerset and Exmoor National Park Joint Structure Plan Review and Policy H1 of the Taunton Deane Local Plan Revised Deposit which was necessary to achieve the proper planning of the area; and
- (2) to request the Council for a supplementary estimate of £5,000 to finance the Compulsory Purchase Order procedure.

RECOMMENDATION

The Committee is asked to re-consider its decision of the 30 July 2003 in the light of the additional factors which have arisen following the earlier decision.

Chief Solicitor

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APPENDIX 'A'

PLANNING COMMITTEE - 30 July 2003
Report of the Chief Solicitor

Miscellaneous Item.

FOOTPATH ADJACENT TO 36 CRAIG LEA, TAUNTON

Background

In November 2002 this Committee authorised the service of an enforcement notice to secure the removal of a bank and fence panel that had been erected along the boundary of the property 36 Craig Lea, Taunton. The fence would normally have been permitted development but since permitted development rights had been removed, it required planning permission.

The erection of the fence had caused interest locally as it effectively blocked off a footpath link into the adjacent public footpath running between Turner Road and Greenway Road. However, the new footpath which was blocked off was not a public footpath and the land forming it had been acquired by the owners of the adjacent property who wished the footpath link to be closed because of problems of vandalism and crime.

An enforcement notice was served requiring the removal of the bank and fence and the owner complied with the terms of the notice. However, the hedge and bank were replaced with a hedge, which cannot be controlled by planning legislation and the footpath was effectively re-blocked. In addition, the owners indicated they were not prepared to allow people to cross their land and the footpath could therefore not be effectively re-opened.

The Current Position

Local concern over the blocked footpath remains and the Enforcement Officer receives regular complaints. However, for the reasons set out above the use of enforcement powers will not be sufficient to secure the re-opening and future public use of the footpath. Such re-opening is considered desirable in accordance with policies and Government guidance which promotes walking and cycling and the maintenance and extension of the footpath network.. (RPG10, PPG13, Policies STR1, 42 and 44 of the Somerset and Exmoor National Park Structure Plan and Policy H1 of the Taunton Deane Local Plan Revised Deposit.)

Having considered the options, the only way to secure such would be by the purchase of the land, compulsorily if necessary, and the subsequent transfer of the land to the Highway Authority (Somerset County Council) who have agreed to adopt and maintain it in those circumstances. There are powers under S.226 of the Town and Country Planning Act 1990 to compulsorily purchase land "for a purpose which it is

necessary to achieve in the interests of the proper planning of the area in which the land is situated”.

It seems likely that a compulsory purchase order would be necessary and this would have financial consequences, both in terms of compensation to the owners if successful and the payment of their legal costs incurred in a public inquiry. Whilst it is impossible to give a detailed figure at this stage it is anticipated that any compensation together with legal costs would be in the region of £5000.

Members will see from the attached letter that the Avon and Somerset Police are opposed to the re-opening of the link and, whilst the Highway Authority are supportive of re-opening the footpath on policy grounds, they would wish to ensure that the Neighbourhood Watch and the Avon and Somerset Police are consulted.

All those who have expressed a view in respect of earlier applications or enforcement action have been notified of the proposal. The Neighbourhood Watch object to the opening of the footpath indicating that, since its closure, problems of petty crime and vandalism in the vicinity have all but ceased.

There have also been thirty three letters from those in the vicinity opposing the re-opening of the footpath for similar reasons. However, there have been forty one letters from local residents supporting the proposed compulsory purchase and re-opening of the footpath on the grounds that it provides a useful addition to the local footpath/cycling network and was envisaged within the original plans for the development.

The matter is therefore clearly one of balancing the requirements for the good planning of the area and support for policies promoting cycling and walking, against the problems of crime and vandalism which are attributed to the footpath when it is open. However, the provision of a footpath link was part of the original planning concept for the estate and for that reason, and in view of the policy considerations and the earlier decision of the Committee to pursue enforcement, the balance is weighed in favour of taking steps to re-establish the footpath link.

RECOMMENDATION

It is therefore RECOMMENDED that the Executive be recommended:-

- (1) to authorise the making of a Compulsory Purchase Order under S.226 of the Town and Country Planning Act 1990 to acquire the land comprising the former footpath link adjacent to 36 Craig Lea, Taunton to secure a public footpath link between Craig Lea and the adjacent public footpath and to secure the objectives of RPG10 and PPG13, Policies STR1 and 42 of the Somerset and Exmoor National Park Structure Plan Review and Policy H1 of the Taunton Deane Local Plan Revised Deposit which is necessary to achieve the proper planning of the area.
- (2) to request the Council for a supplementary estimate of £5000 to finance the same.

Chief Solicitor

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26/6/03

To Whom it may concern

I am writing with reference to the ongoing problem in Craiglea, Taunton. I was first made aware of the problem in July 2002 when I started the beat, and PC HOOPER and the Neighbourhood Watch Co-ordinator explained what had previously happened.

There was a number of incidents including burglaries, damage and anti-social behaviour where people had been driving along the footpath through the housing. Initially there was complication over who the land belonged to and any rights of way, and at present the land belongs to Mr and Mrs Jefferies of 36 Craiglea.

Since the whole issue began Mr and Mrs Jefferies have been caused extreme distress and financial loss.

A fence was initially placed but then it had to be moved and a hedge/plants were bedded to cover the gap, however the following recent incidents have occurred –

- ◆ Week prior 17/4/03 2 incidents at fence where damage caused, and a persistent male trying to throw a bike over the hedge and run through it.
- ◆ 27/4/03 Fence broken down and thrown over hedge
- ◆ May 03 Plants all pulled out and damaged, someone determined to get through, and another 2 people approached stating "Dave said we could get through".

The above incidents are at the expense of the Jefferies who bought specific plants recommended by the police crime prevention team, in protection of their own property and the other residents in Craiglea.

From a police perspective I feel the footpath needs to be kept closed as the number of crime related issues have become non-existent.

Please do not hesitate to contact me if you require any further information.

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