

# Public Document Pack



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11 June 2013

## **COOPERATIVE SCRUTINY BOARD**

Wednesday 19 June 2013

10am

Warspite Room, Council House, Plymouth (next to the Civic Centre)

### **Members:**

Councillor James, Chair

Councillor Mrs Aspinall, Vice Chair

Councillors Ball, Bowie, Bowyer, Casey, Philippa Davey, Sam Leaves, Murphy and Tuffin.

Members are invited to attend the above meeting to consider the items of business overleaf.

**Tracey Lee**

Chief Executive

# **COOPERATIVE SCRUTINY BOARD**

## **AGENDA**

### **PART I – PUBLIC MEETING**

#### **1. APOLOGIES**

To receive apologies for non-attendance submitted by Cooperative Scrutiny Board Members.

#### **1. DECLARATION OF INTEREST**

Members will be asked to make any declarations of interest in respect of this agenda.

#### **3. CHAIR'S URGENT BUSINESS**

To receive reports on business which, in the opinion of the Chair, should be brought forward for urgent consideration.

#### **4. CALL-IN: LAND REAR OF 29 - 37 LUCAS LANE, (Pages 1 - 12) PLYMPTON, PLYMOUTH, PURCHASE NOTICE SECTION 137 TOWN AND COUNTRY PLANNING ACT 1990**

The Cooperative Scrutiny Board will consider the decision called in by Councillors Patrick Nicholson, Mrs Terri Beer and Ian Darcy.

#### **5. EXEMPT BUSINESS**

To consider passing a resolution under Section 100A (4) of the Local Government Act 1972 to exclude the press and public from the meeting for the following item(s) of business on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in paragraph(s) of Part I of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

### **PART II (PRIVATE MEETING)**

## **AGENDA**

### **MEMBERS OF THE PUBLIC TO NOTE**

that under the law, the Board is entitled to consider certain items in private. Members of the public will be asked to leave the meeting when such items are discussed.

NIL.

Call-InProcedure to be Followed in the Meeting

1. Once the Chair has opened the meeting and any previous business on the agenda been dealt with, the Members who called in the decision will be asked to explain why they have done so and what they feel should be reviewed.

**The Members making the call-in shall be allowed up to 15 minutes in total to present their case.** It shall be up to them to determine how they wish to use their time, they may ask one speaker to speak or share the time among several speakers as they see fit.

2. **15 minutes shall be allowed to respond on behalf of the decision maker(s).** It shall be up to them to decide how to use this allocation. The relevant Cabinet Member, or a senior officer, may make the presentation or they may divide the time between several speakers as they see fit.
3. **After each presentation, Members may ask questions to clarify any points made by the speakers** (although the speakers will not have an opportunity to cross-examine one another).
4. The Cooperative Scrutiny Board will then discuss the matter. **Members may ask further questions of the Members making the call-in or the decision makers during the debate. The Members making the call-in and the decision maker will not normally speak during the debate, except to answer questions**
5. When the Chair considers that the matter has been debated for a reasonable length of time, the decision maker will be offered the opportunity to make any final comments on the matter. **One of the Members making the call-in will also be offered the opportunity to sum up. Each side will be allowed five minutes for this purpose.**
6. The matter will then move to the vote:
  1. The first question is to consider in principle whether, in light of the case presented by the Members making the call-in and any other points made during the debate, Members wish to refer the decision for further consideration. **If members vote no at this stage, the call-in is ended.** The matter will not be referred back and the original decision may be implemented.
  2. If Members vote in favour of referring the matter for reconsideration, they must vote on the following matters:
    - (a) **Where to refer the matter** - Members must decide whether the decision should be referred back for reconsideration directly to the original decision-maker (i.e. the Cabinet **OR** an Executive Committee **OR** to refer the matter to City Council with a request that they decide whether to refer the matter back to the original decision-maker for reconsideration. The Chair shall ask members to vote in favour of either:

- (i) Reference directly back to the original decision-maker **OR**
  - (ii) Reference back via the City Council
- (b) Reasons for referring the matter back** - The Chair will then put to the meeting that the matter be referred back to the original decision-maker (or to the City Council, as the case may be) for the reasons set out in the call-in request. Members will then be invited to move any amendments or additions to those reasons. Members may also move any specific recommendations or issues they would like the original decision-maker or Council to consider. Members must agree on the factors the decision-maker (or Council) are to be asked to consider. The matter may not be referred for reconsideration without reasons being given.
3. If Members of the Cooperative Scrutiny Board vote to refer the matter back via City Council, they must then decide whether to request that any officers should be available to respond to questions at the Council meeting. If they do wish officers to be available, they should specify which officers they wish to be present to answer questions. They may not request any officer below the level of Head of Service to appear before Council.

# EXECUTIVE DECISION

## made by a Cabinet Member



### REPORT OF ACTION TAKEN UNDER DELEGATED AUTHORITY BY AN INDIVIDUAL CABINET MEMBER

Executive Decision Reference Number – EI 13/14

Decision			
1	<b>Title of decision:</b> : Land rear of 29 -37 Lucas Lane Plympton Purchase Notice Section 137 Town and Country Planning Act 1990		
2	<b>Decision maker (Cabinet Member):</b> Councillor Vincent, Cabinet Member for Environment		
3	<b>Report author and contact details:</b> Peter Ford, Head of Development Management, Planning Department, <a href="mailto:peter.ford@plymouth.gov.uk">peter.ford@plymouth.gov.uk</a> . Tel: 01752 304352		
4	<b>Decision to be taken:</b> That the Purchase Notice dated 13 December 2012 be rejected for the reasons set out in the report and that the matter is referred to the Secretary of State.		
5	<b>Reasons for decision:</b> A Purchase Notice under section 137 of the Town and Country Planning Act 1990 has been served on the Council by the owner in relation to land at the rear of 29 -37 Lucas Lane, Plympton. The Council is required to either accept or reject the Purchase Notice. The background report outlines in detail the reason for the recommendation.		
6	<b>Alternative options considered and rejected:</b> The Council could accept the Purchase Notice and acquire the land from the landowner paying the landowner compensation commensurate with the value of the land. However, officers consider that the land is capable of reasonably beneficial use and therefore consider that the Purchase Notice should be rejected.		
7	<p><b>Financial implications:</b> If the Council accepts or the Secretary of State directs the Council to accept, the Purchase Notice the Council will have to purchase the land and the owner is entitled to ask for compensation for the loss of the land. In the absence of agreement between the Council and the owner as to the price to be paid for the land it will have to be valued by an independent valuer assessed in accordance with the rules set out in planning legislation. The Council has no monies allocated within its approved capital programme for the purchase of the land. Land Registry records indicate that the owner paid £16,000 (sixteen thousand pounds) for the land on 23 February 2007.</p> <p>If the Council rejects the Notice it will be referred along with the Council's response to the Secretary of State. There may be consequential legal costs involved as the matter will be dealt with in a manner similar to a planning appeal (estimated cost of £10,000).</p> <p>At this stage of the process these costs are not a matter that should be taken into account when considering the most appropriate response to the notice.</p>		
8	<b>Is the decision a Key Decision?</b>	<b>Yes</b>	(Key decisions are normally made by the Cabinet)

		<b>No</b>	<input checked="" type="checkbox"/>	
<b>9</b>	<b>Please specify how this decision is linked to the policy framework and/or budget:</b>	The planning decisions and subsequent land use options have been considered in line with the Council's adopted Local Development Framework Core Strategy		
<b>10</b>	<b>Is the decision urgent?</b>	<b>Yes</b>	<input type="checkbox"/>	(If yes, ensure that the Chair of the Overview and Scrutiny Management Board signs the report at section 11a and section 11b is completed <u>after</u> the sign off codes in Section 17 are completed)
		<b>No</b>	<input checked="" type="checkbox"/>	(If no, go to section 12)
<b>11a</b>	<b>Signature</b>			<b>Date</b>
	<b>Print Name</b>			
<b>11b</b>	<b>Reason for urgency:</b>			
<b>Consultation</b>				
<b>12</b>	<b>Are any other Cabinet members affected by the decision?</b>	<b>Yes</b>	<input type="checkbox"/>	(If yes, go to sections 13 and 14)
		<b>No</b>	<input checked="" type="checkbox"/>	(If no, go to section 15)
<b>13</b>	<b>Which other Cabinet member is affected by the decision?</b>			
<b>14</b>	<b>Please confirm that you have consulted this Cabinet member</b>	<b>Yes</b>		(No is not an option)
<b>15</b>	<b>Has any Cabinet member declared a conflict of interest?</b>	<b>Yes</b>	<input type="checkbox"/>	Need a note of dispensation granted by the Council's Monitoring Officer
		<b>No</b>	<input checked="" type="checkbox"/>	
<b>16</b>	<b>Which Corporate Management Team member has been consulted?</b>	<b>Name and title</b>	Anthony Payne, Director for Place	
<b>17</b>	<b>Please include the sign off codes from the relevant departments consulted:</b>	<b>Democratic Support (mandatory)</b>		DSO4 13/14
		<b>Finance (mandatory)</b>		PlaceF PD1314 001
		<b>Legal (mandatory)</b>		JAR/14934/05/13
		<b>Human Resources</b>		
		<b>Assets</b>		
		<b>IT</b>		
		<b>Procurement</b>		
<b>Other Information</b>				
<b>18</b>	<b>Is the decision in accordance with an Equalities Impact Assessment?</b>	<b>Yes</b>	<input checked="" type="checkbox"/>	(For further advice, contact Assistant Director for Safer Communities, ext. 4388)
		<b>No</b>	<input type="checkbox"/>	

Briefing report										
<b>19</b>	Is the briefing report attached?	<b>Yes</b>	<input checked="" type="checkbox"/>	(No is not an option)						
	List (and include a hyper link to) <u>published</u> work/information used to prepare the report.	Planning application ref. 02/01458/OUT (land rear of 29-37 Lucas Lane, Plymouth) Appeal ref. APP/N1160/A/03/1120054 (land at the rear of 29-37 Lucas Lane, Plympton, Plymouth) Planning application ref. 07/00768/FUL (land at the rear of 29-37 Lucas Lane, Plymouth) Planning application ref. 12/01531/FUL (land at the rear of 29-37 Lucas Lane, Plymouth) Appeal ref. APP/N1160/A/07/2053836 (land at the rear of 29-37 Lucas Lane, Plymouth)  <a href="http://www.plymouth.gov.uk/planningonline?innoLink%3Dhttp%3A%2F%2Fwww.plymouth.gov.uk%2Fplanningapplications2%2Fearch.asp">http://www.plymouth.gov.uk/planningonline?innoLink%3Dhttp%3A%2F%2Fwww.plymouth.gov.uk%2Fplanningapplications2%2Fearch.asp</a>								
	Do you need to include any confidential/exempt information?	If yes, prepare a second, Part II, report and indicate why it is not for publication by virtue of Part I of Schedule 12A of the Local Government Act 1972 by ticking the relevant box. (Remember to keep as much information as possible in the briefing report that will be in the public domain)								
			<b>Exemption Paragraph Number</b>							
			<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	
<b>Confidential/exempt briefing report title</b>										
Background Papers										
<b>20</b>	Please list all background papers relevant to the decision in the table below. Background papers are <u>unpublished</u> works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based. A folder or a file should not be cited as a background paper, though individual items within the folder or file may be. If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part I of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.									
	<b>Title</b>	<b>Part I</b>	<b>Part II</b>	<b>Exemption Paragraph Number</b>						
				<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
	Purchase Notice dated 13 <sup>th</sup> December 2012 served under Section 137 of the Town and Country Planning Act 1990	x								
Cabinet Member Signature										
<b>21</b>	I agree the decision and confirm that it is not contrary to the Council's policy and budget framework, City Strategy, Corporate Plan and Medium Term Financial Plan.									

<b>Signature</b>		<b>Date of decision</b>	
<b>Print Name</b>			



## **I. BACKGROUND**

- 1.1 A Purchase Notice dated 13 December 2012 was served in respect of land at the rear of 29 – 37 Lucas Lane, Plympton, Plymouth on the Council as the Local Planning Authority by the owner under section 137 of the Town and Country Planning Act 1990. A copy of a plan showing the extent of the land concerned is attached as an Appendix to this report.
- 1.2 A Purchase Notice is a mechanism whereby any landowner who believes their land has become incapable of reasonably beneficial use by virtue of a planning decision may seek to have the land acquired by the Local Planning Authority and be paid compensation due to the loss of the use of the land.
- 1.3 This process is not intended to provide a universal remedy where planning permission is refused. It should only be used in cases where the land has become incapable of reasonably beneficial use in its existing state and no development can be carried out to make its use reasonably beneficial.
- 1.4 The Council should serve a Response Notice within 3 months. The Council can:
  - (i) Accept the purchase notice and acquire the land; or
  - (ii) Confirm that another local authority or statutory undertaker has agreed to comply with the purchase notice in its place; or
  - (iii) Reject the purchase notice and refer the notice and the Council's response to the Secretary of State.
- 1.5 The Secretary of State may;
  - (i) Refuse the notice;
  - (ii) Confirm the notice in whole or in part;
  - (iii) Grant the planning permission, the refusal of which gave rise to the notice;
  - (iv) Direct that planning permission is granted for some other purpose; or
  - (v) Substitute another local authority or statutory undertaker, having regard to the ultimate use of the land.

## **2. THE SITE AND PLANNING HISTORY**

- 2.1 The Purchase Notice relates to Land at the rear of 29 -37 Lucas Lane, Plympton, Plymouth. The land consists of approximately 300m<sup>2</sup> of uneven, overgrown land set behind and bounding 29 to 37 (odds) Lucas Lane. The site is accessed via a narrow lane, which runs down the side of No.37, and which provides pedestrian access to the south eastern entrance to Boringdon Primary School.
- 2.2 In 2002 the previous owner of the site submitted an outline planning application for the erection of a single storey dwelling (Ref. 02/01458/OUT). The planning application was refused for the following reasons:
  - (1) The increase in the use of the means of access to the property by vehicles is likely to cause a safety hazard to the pedestrians that currently use the lane in order to gain access to Boringdon Primary School. This is contrary to policies ATR5 and AHR6 of the City of Plymouth Local Plan First Alteration and policy 48 of the City of Plymouth Local Plan (1995-2011) First Deposit.
  - (2) The vehicular access to serve the proposed development would be most undesirable since it has no sight lines, and therefore the increased use of this access by vehicular traffic would cause prejudice to public safety and convenience and interrupt the free flow

of traffic on Lucas Lane. This is contrary to policies ATR5 and AHR6 of the adopted City of Plymouth Local Plan First Alteration and policy 48 of the City of Plymouth Local Plan First Deposit.

(3) The proposed development would prejudice the ash trees on the northern boundary of the site which are of high amenity value and provide a screen between the houses on Lucas Lane and the school. The proposal is therefore contrary to the aims of policy AEV4 of the City of Plymouth Local Plan First Alteration and policy 72 of the City of Plymouth Local Plan (1995-2011) First Deposit.

(4) The site is overlooked from the rear of the properties in Lucas Lane. It would not therefore be possible to create any private amenity area for the proposed dwelling. The proposal would therefore be contrary to Policy AHR2 of the City of Plymouth local Plan First Alteration and to policy 25 of the City of Plymouth local Plan (1995-2011) First Deposit.

An appeal against this decision was dismissed (Ref. APP/N1160/A/03/1120054).

2.3 Land Registry records indicate that the Owner purchased the site on 23 February 2007.

2.4 In May 2007 a planning application (Ref. 07/00768/FUL) relating to a proposal to develop the land by the erection of a chalet bungalow was refused for the following reasons:

(1) Access to the proposed dwelling is from a narrow access lane. The main purpose of the lane is to provide access to the adjoining primary school. The lane is well used for this purpose and the conflict between its pedestrian use and the introduction of vehicular traffic from the proposed dwelling would be hazardous and contrary to policy CS28 of the Local Development Framework Core Strategy.

(2) The vehicular access to serve the proposed development would be most undesirable since it has no sight lines, and therefore the increased use of this access by vehicular traffic would cause prejudice to public safety and convenience and interrupt the free flow of traffic on Lucas Lane. This is contrary to policy CS28 of the Local Development Framework Core Strategy.

An appeal (Ref. APP/N1160/A/07/2053836) against this decision was dismissed.

2.5 A subsequent planning application was submitted (12/01531/FUL) which appears identical to application 07/00768/FUL. The description stated that the application was for the erection of chalet-style 2-bedroom bungalow with an integral garage and with rooms in the roof space, including front and rear dormer windows and a front roof light. The application has been refused for the following reasons:

(1) Access to the proposed dwelling is from a narrow access lane. The main purpose of the lane is to provide access to the adjoining primary school. The lane is well used for this purpose and the conflict between its pedestrian use and the introduction of vehicular traffic from the proposed dwelling would be hazardous and contrary to policies CS28 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

(2) The vehicular access to serve the proposed development would be most undesirable since it has restricted sight lines, and therefore the increased use of this access by vehicular traffic would be likely to be prejudicial to public safety and convenience and liable to disrupt the safe free flow of traffic on Lucas Lane. This is contrary to policies

CS28 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

(3) The development hereby proposed is likely to result in a small but significant increase in the number of vehicular movements taking place at and in the vicinity of the application site. The Local Planning Authority considers that the increase in vehicular movements arising from development along the narrow lane that lacks footways would give rise to conditions likely to cause:

- (a) prejudice to public safety and convenience;
- (b) interference with the free flow of traffic on the highway; and
- (c) unwarranted hazard to vehicular traffic;

which is contrary to policies CS28 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

The following informative notes were included on the planning decision notice:

(1) The Highway Authority states that it has yet to be demonstrated that the application site has a lawful right of access over the private access lane that is in the ownership of and serves Boringdon School, and also leads to the application site. It is also noted that the access lane has not been included within the red line of the application site.

(2) The design and access statement accompanying the application suggests that the site could alternatively be developed with no on-site car parking. The Local Planning Authority considers that car-free development would not be a reasonable or practical option given the suburban location of the site, and also that the prevention of vehicle parking and access could not reasonably be controlled by a planning condition. Even if vehicles could in some way be prevented from attending and parking at the application site, then any associated parking demand would be liable to be displaced onto Lucas Lane, to the detriment of highway safety where there is already a poor situation.

- 2.6 The owner has served the Purchase Notice claiming that:
- (a) the land has become incapable of reasonably beneficial use in its existing state; and
  - (b) it cannot be rendered capable reasonably beneficial use by carrying out of any other development for which permission has been granted or is deemed to be granted or for which the local planning authority or the Secretary of State have undertaken to grant permission.
- 2.7 Officers are of the view that the land is not suitable for a separate residential dwelling for the reasons outlined in the refusal reasons and appeal decision or for other development that will require separate vehicular access and parking. It could however be used in association with existing residential dwellings such as an extension to the existing rear gardens. It could also be used as a separate area of recreational land for the landowner if there was insufficient interest from existing residents to purchase the land. This recreational use would be predicated on their being no vehicular access and parking to the site.
- 2.8 Other land use options could be considered in association with adjacent uses, electricity substation, Boringdon Primary School and the Council owned allotments.
- 2.9 The electricity substation is an historic facility dating from the mid-1960s. It does not currently benefit from any parking provision for maintenance vehicles. If there were a need

to update or increase the supply capacity of the substation additional adjoining land could be beneficial.

- 2.10 The land adjoins Boringdon Primary School. However, given the location of the land and its restricted size it does not lend itself to integration into the School site except possibly for premises for extended School facilities such as before and after school club and / or a pre-school (albeit safely and easily accessible external play space would also be required for this use). Such facilities are already currently provided on the Boringdon Primary School site. Alternatively the land could be used as a landscaped amenity habitat / conservation area for the School.
- 2.11 The Council's Allotments Officer has been consulted and has advised that the land could not be cost effectively integrated with the nearby Lucas Lane allotments requiring its own secure enclosure and access and the provision of a water supply. The land itself is not appropriate for the provision of standard sized Council allotments but this would not prevent private cultivation.

### **3. FINANCIAL IMPLICATIONS**

- 3.1 There will be financial implications to any of the response options as outlined below:
- a) If the Council accepts the Purchase Notice the Council will have to purchase the land and the owner is entitled to ask for compensation for the loss of the land. In the absence of agreement between the Council and the owner as to the price to be paid for the land it will have to be valued by an independent valuer assessed in accordance with the rules set out in planning legislation. The Council has no monies allocated within its approved capital programme for the purchase of the land. Land Registry records indicate that the Owner paid £16,000 (sixteen thousand pounds) for the site on 23 February 2007.
  - b) If the Council rejects the Notice it will be referred along with the Council's response to the Secretary of State. There may be consequential legal costs involved as the matter will be dealt with in a manner similar to a planning appeal.
  - c) However, at this stage of the process these costs are not a matter that should be taken into account when considering the most appropriate response to the Notice.

### **4. CONCLUSION**

- 4.1 That the Purchase Notice dated 13 December 2012 be rejected for the reasons set out in the report and that the matter is referred to the Secretary of State

# CALL-IN REQUEST FORM






**PLYMOUTH**  
CITY COUNCIL

<b>Decision to be called in</b>	EI 13/14 Land rear of 29 – 37 Lucas Lane, Plympton, Purchase Notice Section 137 Town and Country Planning Act 1990
<b>Decision made by:</b> (Delete the choices which do not apply)	<input type="checkbox"/> The Cabinet or <input type="checkbox"/> A Cabinet Member or <input type="checkbox"/> Executive decision made under joint arrangements
<b>Date decision was made</b>	29 <sup>th</sup> May 2013
<b>Are you calling the decision in because you believe it to be outside of the Budget or Policy Framework</b>	No (If Yes, state the reasons why you believe it to be outside the Budget or Policy Framework in the reasons section below)
<b>Reasons for the Call-In</b> The reason for call in must fall within one or more of the following categories: <input checked="" type="checkbox"/> The process by which the decision was made was deficient in some way. e.g. did the decision maker neglect to consult people who should have been consulted? <input checked="" type="checkbox"/> The decision maker failed to consider alternative courses of action <input checked="" type="checkbox"/> The decision taker failed to take into account relevant factors <input type="checkbox"/> The decision was wrong in law or fact– the call in form must state why	i) No consultation with Cllr Nicky Williams who has responsibility for Boringdon Primary School and schools in our City. ii) No indication that the Director of People has been consulted. iii) Cllr Nicholson having consulted the Headteacher of Boringdon Primary School, since the publication of this decision, confirms that no consultation with the School has taken place. iv) Boringdon Primary School is supportive of the land being secured for educational purposes.
To be valid <b>THREE</b> Councillors must support the request. All three Councillors should sign the form <i>OR</i> all three Councillors should e mail the Democratic Support Section ( <a href="mailto:democratic.support@plymouth.gov.uk">democratic.support@plymouth.gov.uk</a> ) expressing their support for the call-in. In this case, the form should be completed and attached to all of the e-mails.	

cont .....

**Signatures of THREE Councillors:**

Name	Signature
1. Cllr Patrick Nicholson	 05/06/13
2. Cllr Mrs Terri Beebe	 6/6/13
3. Cllr Mr for Danny	 6/6/13

<b>Contact Details:</b>	
Name of councillor to be contacted if there are any difficulties or questions. Councillor Patrick Nicholson	patrick.nicholson@plymouth.gov.uk

**Notice of call-in for non-urgent decisions -**

**(i) must be received in the Democratic Support Unit by 4.30 p.m. on the fifth working day after Councillors have been notified that the decision has been made;**

**(ii) can be submitted to the Democratic Support Unit or by using the on-line form which should be e-mailed to [democratic.support@plymouth.gov.uk](mailto:democratic.support@plymouth.gov.uk)**