

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 300m² 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