



CABINET – 5TH FEBRUARY 2021

DISPOSAL OF LAND AT LAKE TERRACE, MELTON MOWBRAY

**URGENT REPORT OF THE DIRECTOR OF CORPORATE
RESOURCES**

PART A

Purpose of the Report

1. The purpose of this report is to seek the Cabinet's approval to the disposal of County-owned land at Lake Terrace, Melton Mowbray which is required for access to a planned residential development.
2. This report is being brought to the attention of Cabinet following the recent Melton Borough Council cabinet decision regarding a residential development scheme in Melton which may require County Council land for it to be delivered. The County Council had not been informed by Melton Borough Council of a report to its Cabinet or the decision.

Recommendations

3. It is recommended that:
 - (a) The Cabinet approves the disposal of the land at Lake Terrace, Melton Mowbray (shown as shaded pink and edged red on the plan attached as Appendix B to this report);
 - (b) The Director of Corporate Resources, following consultation with the Cabinet Lead Member for Resources, be authorised to agree a 'best value' sum for the disposal of the land at (a) above and finalise the disposal.

Reasons for Recommendations

4. In accordance with s.123 of the Local Government Act 1972, the County Council has an obligation to achieve 'best value' in the disposal of its land subject to various criteria set out in a General Disposal Consent Order (see also paragraphs 24 to 29 of this report below).
5. The sale of this land will assist in delivering a housing scheme in Melton Mowbray which already has the benefit of a detailed planning permission from Melton Borough Council.

6. The sale is expected to generate a significant capital receipt for the County Council.

Timetable for Decisions (including Scrutiny)

7. Subject to the Cabinet's agreement the sale will be pursued at the earliest opportunity to enable the development to proceed as planned.

Policy Framework and Previous Decisions

8. The Corporate Asset Management Plan requires the County Council to continually assesses its property portfolio and, following due process, to dispose of surplus assets to help support its Capital Programme.

Resource Implications

9. The County Council faces a very difficult financial outlook and the disposal of this land could generate a substantial capital receipt.
10. The Director of Law and Governance has been consulted on this report.

Circulation under the Local Issues Alert Procedure

11. Mr. A. Pearson CC

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PART B

Background

12. In November 2020, Melton Borough Council (“the Borough Council) granted a Reserved Matters planning permission for 90 dwellings (planning application ref: 20/00317/REM) pursuant to an outline permission granted in 2017 (planning application ref:7/01500/OUT) subject to a s106 Planning Agreement on land opposite and near County Council owned land at Lake Terrace, Melton Mowbray. (See Appendix A for scheme plan)
13. The development is to be delivered by a partnership between GS Developments (a Leicester-based property development company) and Nottingham Community Housing Association. The partnership intends to build 48 affordable properties and 42 properties with shared ownership on a site off Lake Terrace, with construction set to begin in March 2021 (completion summer 2022).
14. The access road known as Lake Terrace is owned by the Borough Council in part and the County Council in part, illustrated in Appendix B.
15. Without both parcels of land that form the access road, the developer cannot access the adopted highway for its permitted scheme. It therefore needs to acquire a stretch of Lake Terrace.
16. The developer’s requirement gives rise to a “ransom” situation. In such circumstances the land will be subject to a professionally recognised and understood methodology for its valuation (well known to surveyors and valuers, who apply the principles set out in *Stokes v Cambridge Corporation* (more on which below).

Melton Borough Council decision

17. On 20th January 2021 the Borough Council’s Cabinet approved the disposal of its land ownership on Lake Terrace so that the residential scheme could be delivered.
18. The Borough Council report stated that its land would be sold to the developer at the point when the developer entered into a section 38/section 278 agreement with the County Council so that the development land could be contiguous with the adopted highway.
19. However, the Highways extents of the County Council’s land (shown in Appendix B) stop short of the site and, as shown on the plan, the remaining land is owned by the County Council in its own right, i.e. is not held as highway land and therefore needs to be acquired by the developer.
20. The County Council learnt through the media that the Borough Council has agreed a price for its land at circa £150,000.
21. The report stated that “The sale price of for the [Borough] Council’s Lake Terrace access land has been commercially negotiated, with reference to the principles in

case law *Stokes v Cambridge* 1961 for ransom land, which sets out 1/3rd of the resultant development land value, less profit, and costs for roads, sewers and fencing, should be attached to the ransom land”.

22. By adopting a pro rata division (in terms of site area), of the Borough Council’s figure of £150,000, results in a value of less than £50,000 for the County Council land.
23. However, valuation advice from the County Council’s Head of Strategic Property Services suggests that this figure is substantially lower than the expected market value for a ransom strip linked with a sizeable residential development and that the approach taken by the Borough Council is not in accordance with the usually accepted professional valuation methodology.

S123 Local Government Act 1972 implications

24. Whilst noting there are some specific circumstances where a disposal at below ‘best value’ is permissible, (see para 27), a Local Authority is bound by s123 of the Local Government Act 1972 to achieve ‘best value’ for the disposal of land.
25. A council is able to sell a site for less than its market value, but it must seek statutory consent to do so. Specific consent is not needed where a council can demonstrate the land sale will help to secure the improvement of the economic, social or environmental wellbeing of the local area, and the undervalue is only up to £2m less than market value.
26. These are the circumstances where socio and economic benefits can be relevant. The undervalue itself still needs to comply with “normal and prudent commercial practices’, including obtaining the view of a *professionally qualified valuer*.
27. If the sale of land is more than £2m below best value, then the Secretary of State’s approval is required.
28. A council can be found in breach of s123 LGA 1972 if it has: -
 - a. failed to take proper advice;
 - b. failed to follow proper advice for reasons that cannot be justified; or
 - c. has followed advice that was so plainly erroneous that in accepting it, the local authority must have known, or at least ought to have known, that it was acting unreasonably.
29. Selling at undervalue may also give rise to potential State Aid issues.

Stokes v Cambridge Corporation 1961

30. If the County Council has land that can be classed as ransom land, then the findings of the case known as *Stokes v. Cambridge Corporation (1961)* are to be followed. This decision related to a “ransom strip” - an area of land which provides the key to unlock the development potential of adjacent land by, for example, enabling a satisfactory access to be provided.

31. The County Council ransom strip arises because the County Council holds some land on Lake Terrace as Highways Authority and some parcels of land in its own right, outside the Highways extents.
32. The existence of non-Highway land was made clear to the developer by the Highways Authority when it responded to enquiries as a statutory consultee during the planning process.
33. Nevertheless, no approach was made to County Council to acquire the non-Highway owned land, nor was any calculation suggested in the Borough Council's report on 20th January. even though reference was made in that report to these separate land ownerships benefiting the County Council.
34. No approach was (or has been) made by the developer to acquire the land from the County Council via a negotiated land deal.
35. To protect the County Council's position and to ensure that it is not in breach of its fiduciary duty to achieve best value, it will be necessary to undertake a valuation of its non-Highway land in the context of *Stokes v Cambridge*.
36. The Land Tribunal held in *Stokes v. Cambridge*, that the beneficiaries of the ransom land should share in the uplift in value that their land creates to the developer's land.
37. Following *Stokes v. Cambridge* at Lake Terrace therefore, the Borough and County Councils should share the uplift in value from undeveloped farmland to fully developed residential land, having deducted developer's (profit and costs of roads, sewers, fencing, consents and contingencies). The actual amount of uplift that the ransom owners should receive was also mentioned in the findings of *Stokes v Cambridge*.
38. The finding of the Lands Tribunal was that the starting point should be that the ransom strip is worth 50% of the increase in value of the adjacent land; provided that the increase in value for these purposes is calculated after account has been taken of the expenditure and risk required to achieve the final increase in value (by deducting developer's profit and the cost of provision of necessary infrastructure).
39. Subsequent court decisions have upheld the 50% uplift figure namely *Batchelor v Kent County Council [1992]* and *Ozanne and others v Hertfordshire County Council [1989]*.
40. Applying the above to the Lake Terrace situation is likely to give rise to a substantially higher potential capital receipt than the publicly reported figure of £150,000 for the Borough Council owned land and thus a substantial potential capital receipt for the non-Highway County Council land.
41. Fully costed professional valuations are needed to wholly understand and appraise the full ransom value of both the Borough and County Council's land.

42. Only once those valuations have been completed, can the County Council then enter into meaningful negotiations with the developer mindful of the true value of its ransom land.
43. The Flood Risk Assessment dated February 2020 (as submitted by the applicant/developer as part of the Reserved Matters planning application) clearly shows at least one future phase of housing on land owned/controlled by the developer and given the access to this phase is also over the Borough and County Council's land on Lake Terrace, this phase should also be taken into account in valuing the two Council's ransom strips.
44. It is noted that the plan taken to the Borough Council's Cabinet was the superseded Outline planning application plan which did not clearly show how the next (and possible more) phases of development might affect its valuation of its land ownership on Lake Terrace.
45. The County Council is mindful that the proposed use is an affordable housing scheme (with the benefit of planning permission and Homes England grant money) but it is duty bound to ensure it has achieved best value when disposing of its land interests.
46. Ransom strip valuations are not statutory valuations and so the outcome will be down to negotiations between the developer and the County Council and reasonableness from both parties.
47. The County Council (as ransom strip owner) has only the developer as a likely buyer (excepting the Borough Council), while the developer will not be able to deliver its scheme without the County Council's ransom strip. However, the developer will not agree to a ransom value which means its scheme is no longer viable.
48. It may be that no land deal can be reached which is acceptable to both parties. This is clearly an unwelcome potential outcome, but it is one that should be considered.
49. The County Council and the developer could refer the valuation to the Upper Tribunal (Lands Chamber) to decide what the correct ransom valuation should be in circumstances where the parties cannot agree. There would be cost issues with this approach but a clear, independent, decision would be reached (although it is capable of being appealed in the courts). The Tribunal would treat the valuation as though it was a Compulsory Purchase Order valuation.
50. Alternatively, the developer may wish to consider other options in the situation of no agreement being reached. In this situation it would be for the developer to possibly consider whether to stop the project (and be liable for the losses incurred thus far) or it may consider demonstrating to the Borough Council that it is appropriate for it, as the local planning authority, to exercise its compulsory purchase powers.

Compulsory Purchase Order (CPO)

51. If routes other than acquiring land by agreement are to be considered, then the developer might seek to persuade the Borough Council to exercise its compulsory purchase powers to acquire the County Council's land pursuant to s226 of the Town and Country Planning Act 1990.
52. For this route to succeed, the developer would need to indemnify the Borough Council for its costs of promoting a CPO (which could be significant assuming a public inquiry) and the costs of compensating the County Council for the land itself. Moreover, the Borough Council would need to demonstrate to the satisfaction of the Secretary of State that the exercise of its compulsory purchase powers (and subsequent works) are likely to promote or improve the economic, social or environmental wellbeing of the area.
53. Clearly as landowner, the County Council would have to be notified of any CPO and would have the right to object in which case the issue would be resolved by a public inquiry. It is only after any objections have been heard by an inspector appointed by the Secretary of State that the CPO could be confirmed.
54. The County Council and Borough Council could continue to negotiate a sale by private treaty if they so wish, even during the promotion of a CPO, and indeed the government's guidance advises acquiring authorities to seek to acquire land by agreement and use CPO as a last resort.
55. In the event a confirmed CPO was exercised to acquire the County Council's land, the Borough Council would be liable to pay the County Council compensation for that acquisition, including the value of the land (with any inherent ransom value), such value to be determined by the Upper Tribunal (Lands Chamber) if not agreed.

Equality and Human Rights Implications

56. At this stage, there are no equality or human rights implications directly arising from this report.

Background Papers

Report to Melton Borough Council Cabinet on 20 January 2021 "Disposal of Land to Enable Development of Affordable Housing"

<https://democracy.melton.gov.uk/ielistdocuments.aspx?CId=202&MIId=1116&Ver=4>

Appendices

- Appendix A - Development Scheme Plan
- Appendix B - Title plan showing County and Borough Council land ownerships on Lake Terrace

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