

**REPORT OF ECONOMIC DEVELOPMENT AND ENTERPRISE COMMITTEE:
DISPOSAL OF LAND AT JOHNSON HOUSE**

**EXE160908
ITEM 6**

- LEAD MEMBER:** Councillor Brian Dixon, Chair of the Group that was established to look at this Call In.
- LEAD OFFICER:** Neil White, Scrutiny Support Officer.
- REPORT AUTHOR:** Neil White, Scrutiny Support Officer.
- SUMMARY:** Five members of the Council (Councillors A Norwood, D Moore, Mrs Y Clarkson, E Eastwood, and C Whiteside) exercised their right under Overview and Scrutiny procedure rules to call in the Executive's decisions of 12 August 2008 (**EXE/07/0036 and EXE/07/0054**) on the 'Disposal of Property Land at Johnson House'. This report gives the findings and recommendations made by the Group that was set up to consider and recommend to the Executive on this call in by the Economic Development and Enterprise Overview and Scrutiny Committee. The Group consisted of Councillors Brian Dixon, Robin Pitt and Henry Wormstrup.

RECOMMENDATIONS: That the Executive be requested to consider the recommendations made in section 2 below.
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1. INTRODUCTION

The Group met on 28 and 29 August 2008 to consider evidence from a number of internal and external witnesses. These were:

- Abbeyfield Society
- Residents and local ward councillor
- Executive Portfolio Holder
- Property Services Manager

The Group further met on 1 September 2008 to seek the professional advice of the Head of Democratic Services, Property Services Manager, Deputy Acting Section 151 Officer, Legal Services Manager and Scrutiny Support Officer on its recommendations.

The Group would like to thank all the witnesses for their attendance at short notice and for their willingness to participate in an open and transparent manner during the evidence sessions.

The Group would like to make it clear that they were established to look into the land disposal issue considered by the Executive and not the planning process.

2 RECOMMENDATIONS

The Executive are asked to consider:

- (A) that consultation on this site should have followed that required for land as an open space and the site should be re-advertised under the requirements of Section 123(2A) of the Local Government Act 1972;
- (B) that on a disposal of land (whether by freehold or the grant of a lease in excess of 21 years) a letter should be sent to the owners of land whose boundaries adjoin the intended disposal site advising them of the Council's intention to dispose of the land so that their comments can be taken into account when the decision to dispose of the land is considered;
- (C) that future reports to the Executive on the disposal of land include full and detailed information on the land and the Council's policies so that the Executive can reach an informed decision;
- (D) that contract standing order 21 be amended so that disposals of land (whether by freehold or the grant of a lease in excess of 21 years) which are, in the opinion of the Monitoring Officer (in consultation with the Section 151 Officer), likely to raise significant public issues (irrespective of the value of the land) be referred to Full Council for consideration;
- (E) that a possible solution to this situation would be to (a) sell to the owners of Johnson House the land that it needs to enable the extension to proceed; (b) sell to the residents the woodland area for them to develop the site as a woodland area; and (c) to negotiate with the owners of Johnson House in respect of the area near the driveway to Johnson House so that a public right of way or easement is available for the public to access the woodland, and
- (F) that if the Executive is minded to endorse the solution at (E) that:
 - (a) notice of intention to dispose of the land is advertised in the Whitehaven News for two consecutive weeks in accordance with section 123(2A) of the Local Government Act 1972;
 - (b) that the Property Services Manager be requested following the placing of that notice to discuss the matter with the owners of Johnson House and the residents to explore and prepare heads of terms (subject to approval) for the respective purchases; and
 - (c) that a full report be made to the Executive on responses received to the notice of intention to dispose and the outcome of discussions with the owners of Johnson House and residents and a decision made on whether the land should be disposed of. If either disposal appears to be at a consideration less than the best that can reasonably be obtained that a separate valuation will be required confirming that the disposal falls within the General Disposal Consent 06/2003. The Executive decision can be made subject to that confirmation being received. If following the advert and outcome of discussions the matters remains one which is likely to raise significant public issues and the Executive has endorsed recommendation (D) above then the decision will be referred to Full Council.

3 KEY OBSERVATIONS

The Group came to a number of key observations. These are:

1. The land involved is an open space. As such notice of intention of this disposal should have been undertaken as set out in section 123 (2A) of the Local Government Act 1972.
2. The formal valuation of the site was not completed until 28 August 2008. This is 16 days after the Executive considered its report on the disposal of the land.
3. The Executive decision would have been better if it had been made in principle subject to the determination of the valuation of the land.
4. The Executive report did not include a valuation of Option A. It did not make it clear that Option B included the land near the driveway to Johnson House. The plan on the Executive papers did not include this area.
5. The Executive may have come to a different decision if it been made aware that the owners of Johnson House were happy to purchase the parcel of land needed for the extension (Option A) and that the residents might be happy to pay to take over the woodland area. Both these statements were made to the Group during their evidence sessions. In light of this the Group feels that the land has been undervalued.
6. Whilst this disposal was a special purchase under the Council procedures due consideration should have been taken of the ability of the buyer to achieve the conditions of sale. It could be considered that it was an unreasonable request to ask a not for profit organisation to take over the management of a woodland when they do not have the staff or resources to do this. If the disposal of the woodland proceeds the Council should ensure that the woodland is in a reasonable condition on completion.
7. The Portfolio Holder stated that the Executive decision related solely to the disposal of the land and did not consider the Planning Panel report. The Group were confused as the Planning Panel report was appended to the Executive report and as such was there for the Executive to consider. There were also issues in the Planning Panel report that affected the land disposal such as the number of trees to be removed and drainage. The letters of objection to the planning application clearly involved land disposal issues and should have been taken into consideration by the Executive.
8. The Group was concerned by the drainage issue. Future development of the site would require inconvenience for the residents as a result of that drainage and the Council had a moral obligation as the seller of the land to draw this to resident's attention.
9. The residents made strong claims that there was an existing restriction on this land but were unable to provide any documentary evidence of this. If these exist the residents are asked to provide them so that the Executive can consider these at its meeting on 16 September 2008.

- 10.** The Group notes that there were 52 letters of objection to the planning permission although it believes that they were not all spontaneous.
- 11.** The Group noted the residents claim that the path which is clearly marked on the ground has been used for 40 years. As such it may be a permissive path and the residents are suggested to contact Cumbria County Council about whether this path can be added to the definitive map of rights of way.
- 12.** The Executive report made mention of the council policies but did not refer to the policy referring to the disposal of non operational assets that was reported to the Executive in 2004. It would also have been useful to refer to the Asset Management Plan.
- 13.** The Section 151 Officer's comments in both Part 1 and Part 2 of the Executive report refer to the capital receipt being used to support service delivery. The Group understands that the capital receipts are used to fund the capital programme. Finance has confirmed that the capital receipt can only be used to finance future capital based expenditure, as approved by Members in the capital programme, and, in accordance with capital rules and legislative regulations.
- 14.** The Group were concerned to learn that the first time residents heard that the whole woodland was to be involved in the sale was at the Executive meeting on 12 August 2008. The Group would not like to see this situation repeated and would suggest that the Council's constitution be reviewed to consider the question of allowing members of the public to speak on matters before the Executive and other Council meetings where they are not already allowed to do so.