



**AGENDA ITEM:**

**CABINET:**  
**16 June 2009**

**COUNCIL:**  
**15 July 2009**

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**Report of: Executive Manager Regeneration and Estates**

**Relevant Portfolio Holder: Councillor A Owens**

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**SUBJECT: SALE OF SMALL PLOTS OF LAND OWNED BY THE COUNCIL**

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Borough wide interest

**1.0 PURPOSE OF THE REPORT**

- 1.1 To advise Cabinet of the proposed method of dealing with the sale of small plots of land owned by the Council.
- 1.2 To seek approval for the methodology of such sales.

**2.0 RECOMMENDATIONS**

- 2.1 That the methodology for the sale of small parcels of land as set out in Appendices A and B attached to the report be approved.
- 2.2 That receipts up to a ceiling limit of £5,000 from the sale of small plots of land be "ring fenced" for regeneration schemes in the Borough.

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**3.0 BACKGROUND**

- 3.1 The Council holds a significant amount of land which it has acquired over a number of years by a variety of different methods. These are held by different Divisions of the Council. These land holdings range from large areas of Public Open Space such as Beacon Country Park and Golf Course to areas of landscaping within the urban environment. The latter includes large tracts of structured planting, grassed areas and small parcels of amenity shrub planting. Most, if not all, were planted as an integral part of the design of residential estates to enhance their visual amenity.

- 3.2 The majority of the land in Skelmersdale was conveyed to the Council by the Skelmersdale Development Corporation in 1984 whilst the remainder across the Borough was already in the Council's ownership or has been acquired subsequently. The situation which presently operates is that when an application to purchase land is received the views of the relevant Executive Manager are sought and if he/she has no objections to the subject land being conveyed the opinions of other Council officers such as those from the Planning and Grounds Maintenance Divisions are sought. If the consensus is that the land should be conveyed, a short report is prepared for the relevant Portfolio Holder and the Leader of the Council detailing the case and the price agreed.
- 3.3 The Regeneration and Estates Division is receiving an increasing volume of enquiries, mainly from residents in Skelmersdale, who wish to acquire land from the Council to incorporate into their housing plot, or to provide private parking and improved security. In addition there are cases in which householders have illegally taken possession of land which is owned by the Council and the Council takes the necessary steps to reclaim the land. There are also cases where householders require vehicular access to their property across land which is in the Council's ownership.
- 3.4 Previously officers have dealt with each request on a case-by-case basis as and when resources permit.
- 3.5 Applications from companies wishing to purchase land for commercial purposes differ to those received from domestic applicants and are subject to an accepted protocol and as such will not form part of this report.

#### **4.0 CURRENT POSITION**

- 4.1 There is a backlog of requests from local residents seeking to enlarge their current land holding, all of whom have been issued with letters advising them that their application will be dealt with subject to the outcome of a Cabinet report.
- 4.2 The Estates and Valuation Manager believes that the various land holdings which adjoin the residential properties cumulatively have a significant financial value to the Council and should be regarded as capital receipt producing assets. It is likely that the extension of the curtilage of a domestic property by even a modest amount generally results in an increase in the value of that property which may be significant. It is equitable, therefore, that the Council shares in that appreciation.
- 4.3 In addition, the granting of a legal easement which permits vehicular access across Council owned land, subject to the other necessary consents, usually results in an uplift in value for the occupier and the Council should share in this uplift.
- 4.4 The authority to grant easements has been delegated to the Executive Manager Regeneration and Estates, however the refusal of a request or the levying of a charge for granting this access can lead to a significant amount of lobbying of elected Members and it was thought appropriate to detail the issues in this report.

## **5.0 ISSUES**

- 5.1 While the sale of open space and landscaped amenity areas inevitably benefit the purchaser, they can also have undesirable environmental, community and land management consequences. The undesirable environmental consequences include adverse affects on the character and appearance of any area; individual and/or cumulative loss of visual amenity and/or wildlife habitat provision; and adverse affects on services (drainage systems, energy supplies etc) and increased grounds maintenance costs. The undesirable community consequences include an increased fear of crime e.g. reduced visibility in the street from fencing off land. Finally, the severing of parcels of Council owned land could create land management problems, including more difficult grounds maintenance and other maintenance operations.
- 5.2 Conversely, some sales may produce environmental benefits e.g. the removal of unsightly shrub beds of poor quality. Similarly, the enclosure of land which was previously the focus of anti social activities can bring about community benefits.
- 5.3 It cannot be guaranteed that the sale of landscaped areas will reduce the Council's liabilities in terms of grounds maintenance costs. Although, some sales may have neutral effects, in that they have no discernable environmental, community or land management effects e.g. the removal of a small shrub bed in a well landscaped setting.
- 5.4 Planning permission is normally required for the change of use of land. The responsibility of obtaining planning permission lies with the prospective purchaser. If planning permission cannot be obtained, there is no point in the applicant proceeding with a sale.

## **6.0 PROPOSALS**

- 6.1 The Council needs to consider whether to adopt a structured and consistent approach for dealing with these requests and consider what is involved in terms of the increased workload.
- 6.2 To ensure that all applications are considered in a consistent and structured way, all enquiries (to include those received by other Sections of the Council such as Housing and Leisure) will, in the first instance, be referred to the Councils Estates and Valuation Manager, together with confirmation of whether the land is declared surplus by the operational occupier. Upon receipt of this information the Estates and Valuation Manager will send a holding letter to the applicant.
- 6.3 In terms of determining the applications it is proposed that the following criteria be used to assess if the land should be sold:
- Consider the existing function of the land e.g. Leisure use, Public Open Space/Structure tree planting/open grassed area capable of recreational use/Amenity shrub planting
  - Size of site

- Physical condition of land
- Service implications
- Contribution of the land to the character, amenity and wildlife habitat provision of the area
- Effects on local or wider regeneration objectives/initiatives
- Crime and disorder issues
- Maintenance and other legal liabilities

Details of the methodology of assessing and processing sales are set out in Appendices A and B.

- 6.4 The approach set out above has been circulated to the Housing, Street Scene, Community Services and Planning Divisions and no adverse comments have been received. The MAPS team has noted that the notification of a proposed sale would enable consultation with the Police under the Crime and Disorder Act.
- 6.5 As a pre-requisite for a sale, planning permission must be obtained (if required).
- 6.6 All applicants should initially be made aware of the costs which will be incurred if the matter proceeds to completion including surveying, legal and any potential planning or other relevant fees. In addition a non-refundable contribution of £100 towards the costs incurred in producing a valuation must be paid before an inspection is carried out.
- 6.7 There will continue to be a standard fee for the Council's costs for granting an easement together with a premium payable to reflect the uplift in value for the property owner.

## **7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 7.1 Some purchases will involve the loss or reduction of existing vegetation. This will marginally reduce wildlife habitats and biodiversity. However, the amount of land involved in the sale of plots is generally small and the conveyancing document will contain a covenant restricting the use to garden space.
- 7.2 There is concern that an increase in the use of hardstanding is leading to an increased run-off of surface water. The standard easement document will require that this problem be mitigated by the use of cellular re-enforcement. This has the added benefit of retaining the visual amenity of grassed verges and enabling the use of plant by the Street Scene Manager to maintain the area.
- 7.3 With regard to the Community Strategy the sale of land will in many cases improve safety for householders and increase the enjoyment of their properties.

## **8.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 8.1 The sale of small plots of land, involves a considerable amount of staff resources. Details of the disposal procedures are shown in Appendix B. The method by which the Council acquired the land determines primarily the financial return, due the potential clawback. If the land has been acquired with a restrictive covenant in place the matter is significantly complicated and there is

generally a payment required by the beneficiary of the covenant for its release. This usually renders the sale not financially viable. This is the case when an estate has been privately developed and the landscaped areas have been conveyed to the Council once the properties have been sold.

- 8.2 Even land which is relatively unfettered still requires input on the proposed sale from a number of divisions within the Council together with a site visit by the valuer to determine whether or not there are circumstances which would render a sale inadvisable. These may include matters such as sight lines or amenity value and may require consultation with the Highway Authority (Lancashire County Council).
- 8.3 Whilst there is the potential to raise receipts through these disposals there are not sufficient staff resources available to carry out the work at present. It is proposed that the current applications are passed to a third party such as an external firm of surveyors and Consortium Solicitors, who will carry out the process. The costs of these services will be borne by purchasers. Once the number of outstanding cases has been dealt with and the number of applications is more manageable the process will revert back to the in house surveyors and lawyers, subject to adequate staff resources at that time. To ensure consistency, the fees charged will remain the same whether relating to outsourced or in house work.
- 8.4 The Council also receives applications from owner-occupiers who require vehicular access across Council owned land. This is usually to allow them to park within the curtilage of their property. This seemingly small requirement has significant financial implications for the applicant which is not always initially appreciated. These costs include obtaining consent from the Council as the Planning Authority, the costs required by Lancashire County Council for the installation of a dropped kerb and finally the legal fees and premium payable to the Council as the landholder. The applicant will be advised of the costs (if known) at the early stages of their request and these should be measured against the benefit to the householder of having an off road car parking space.
- 8.5 The granting of a legal easement which permits a resident to cross Council owned land has two advantages. Firstly, it allows the Council to impose a measure of control over the usage and treatment of the land e.g. where the access is across a grassed area the resident can be required to install green cellular reinforcement within the verge which allows access whilst retaining the grassed amenity. Secondly, it preserves the Council's rights of achieving unfettered ownership of the land should it wish to carry out future development works. The existence of any underground drainage and or utility apparatus would also have to be considered and suitable construction methods adopted that protect and allow access.
- 8.6 I believe that it is possible to deal with the current number of easement requests that it receives within existing staff resource levels.
- 8.7 In respect of land held for housing purposes statute determines that if the sum received from the sale of a small plot of housing land is less than £10,000 it is

regarded as de minimus and the Council is able to retain 100% of the receipt. It is anticipated that the vast majority of sales would fall into this category.

- 8.8 Members may wish to ring fence the receipts to undertake small regeneration schemes in the Borough. Although Members will be aware that income from larger disposals is ring fenced for the Abbotsford regeneration project as previously agreed by Members. A ceiling limit of £5,000 is therefore recommended with regards to these small receipts.

## **9.0 RISK ASSESSMENT**

- 9.1 The risk of not processing requests for such land purchases may lead to residents incorporating areas into their gardens which will require a greater amount of officer input in dealing with illegal trespass.
- 9.2 There is a risk of inconsistency in the way requests are determined if the policy for dealing with the sale of small plots of land owned by the Council is not in place.
- 9.3 If requests to purchase small plots of Council owned land are not dealt with in a timely and transparent manner there is a risk of increased complaints from applicants.
- 9.4 A further risk is that of a potential loss of capital receipts due to not having the staff resources to progress applications. This could also potentially stifle some small scale regeneration opportunities.
- 9.5 It is envisaged that control on the use of the land once sold to garden use will be by way of restrictive covenants contained in the conveyancing document. It should be noted that recent caselaw has stated that if an Authority grants planning permission then this may override any covenants the Council, under its land owning function, have imposed on the land.

## **10.0 CONCLUSIONS**

- 10.1 The sale of small parcels of land can be beneficial to the Council and prospective purchasers.
- 10.2 Requests for such sales should be assessed against the criteria in Appendices A and B of the report, and should be subject to the grant of planning permission for the proposed use.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

### **Appendices**

Appendix A – Land disposal criteria

Appendix B – Disposal procedures