

Eden District Council

Planning Applications Committee
16 August 2007

Purchase Notice - Moss House, Brampton
Director of Corporate and Legal Services

1 Purpose of Report

- 1.1 To advise Members of the result of the Secretary of State's consideration of the purchase notice relating to Moss House, Brampton.

2 Report Details

- 2.1 As Members will recall the owner of Moss House, Brampton, Appleby-in-Westmorland, served a purchase notice upon the Council. The purchase notice had been served following the refusal of planning permission to restore and reoccupy a property which was expressed to have been a dwelling. It was contended that the land had become incapable of reasonably beneficial use.
- 2.2 The Council contested the purchase notice on a number of grounds and in particular that:
- i) it had not been demonstrated that the building was incapable of reasonably beneficial use;
 - ii) there was no evidence of any attempt by the owners to sell or let the building;
 - iii) the land was capable of beneficial use for agricultural purposes;
 - iv) the land which was the site of the building was not physically separate from the agricultural field in which it sits.
 - v) the boundaries which have been drawn around the derelict building had been drawn tightly to prevent any contention that use could be made of the building in relation to the adjoining agricultural land.
- 2.3 The Secretary of State did not uphold the purchase notice. A copy of his decision letter is enclosed. His conclusions were:
- a) it was considered that relatively low value uses such as grazing or the keeping of poultry were capable of being reasonably beneficial uses either on its own or in conjunction with the adjoining land.
 - b) there was no evidence of any attempts to dispose of the land.

c) the server of the purchase notice had not shown that the land was incapable of reasonably beneficial use.

2.4 Members will note that it is possible for a party to request that an inquiry should be held into this matter. Any such request should have been made by 27 July, 2007. No confirmation has been received that any such appeal has been lodged.

3 Policy Framework

3.1 Any purchase notice must be considered on its merits and with regard to the statutory criteria and the advice of the Secretary of State.

4 The Legal Implications

4.1 It does not appear that this matter will be taken further by the server of the purchase notice.

5 The Financial Implications

5.1 There are none arising from this report.

6 Risk Management Implications

6.1 There are none arising from this report.

7. Reasons for decision/recommendation

7.1 To enable Members to be aware of the outcome following the decision to serve a counter notice objecting to the purchase notice.

8. Recommendation:

It is recommended that the decision of the Secretary of State be noted.

P G Foote
Director of Corporate and Legal Services

Background Papers:
Contact Officer: Paul Foote
Telephone Number: (01768) 212205



The Planning Inspectorate

Room 4/04 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line 0117-372 8559
Switchboard 0117-372 8000
Fax No 0117-372 6241
GTN 1371-8559
e-mail: sian.evans@pins.gsi.gov.uk
<http://www.planning-inspectorate.gov.uk>

cc M. Kent
DCL 55

Mr P G Foote
Legal Services
Eden District Council
Town Hall
Penrith
Cumbria
CA11 7QF

Your Ref: PF/MDL/T4/1A/1

Our Ref: APP/07/H0928/176/1125

Date: 27 June 2007

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 137 TO 143
PURCHASE NOTICE RELATING TO LAND AT MOSS HOUSE, BRAMPTON,
APPLEBY-IN-WESTMORLAND, PENRITH, CUMBRIA**

1. I am directed by the Secretary of State to give notice to your Council, under section 140 of the Town and Country Planning Act 1990, of her proposed action in relation to the above mentioned purchase notice, served under section 137 of the Act. The particulars of the proposed action are set out in the enclosed copy of his letter to the server of the notice, which should be read as one with this letter.
2. Your attention is especially drawn to the provisions whereby your Council may, within the period prescribed by the letter, require the Secretary of State to afford them an opportunity of appearing before and being heard by a person appointed by him for that purpose.

Yours faithfully

Sian Evans
Case Officer



INVESTOR IN PEOPLE





The Planning Inspectorate

4/10 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line 0117-372 8594
Switchboard 0117-372 8000
Fax No 0117-372 8181
GTN 1371-8559

<http://www.planning-inspectorate.gov.uk>

Scott Munro
Ward Hadaway, Solicitors
Sandgate House
102 Quayside
Newcastle upon Tyne
NE1 3DX

Your Ref: (P) M.CJD.JNR.CAN031.1/1132000

Our Ref: APP/07/H0928/176/1125

Date: 27 June 2007

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 137 TO 143
PURCHASE NOTICE SERVED BY MR DENNIS CANNON
LAND AT MOSS HOUSE, FAIR HILL, BRAMPTON, APPLEBY, PENRITH, CUMBRIA**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the purchase notice served on Eden District Council on 20 November 2006, under section 137 of the Town and Country Planning Act 1990, in respect of your client's interest in the above-mentioned land.

2. In accordance with paragraphs 27 and 28 of Part II of the Memorandum to DOE Circular 13/83, the Council sent the Planning Inspectorate relevant information and documents. The Council, it is understood, also sent copies to you as Mr Cannon's agent in the matter. By letter of 16 March 2007 you commented on this submission, and the Inspectorate sent a copy of your comments to the Council. They commented further on 11 April 2007. The Secretary of State has considered all this information and must now give her proposed decision on the notice.

Summary of the proposed decision

3. The formal proposal is in paragraph 14 of this letter. The Secretary of State proposes *not* to confirm the notice for the reasons given below. This will become the final decision, unless you or the Council opt to take the matter further, as explained in paragraphs 15 and 16 below.

Reasons for the proposed decision

The land and surroundings

4. The land, comprising the remains of a building within an adjoining field, is situated along a rough track about a kilometre to the north east of the village of Brampton. It is rectangular in shape and approximately 47 square metres in area. The derelict building has only two walls remaining. It is fenced off from the adjoining field by barbed wire. The general pattern of use of the surrounding land is agricultural.



The planning decision which led to the purchase notice

5. On 27 July 2006, the Council, as local planning authority, refused an application (ref: 06/0257) for planning permission for the "restoration and re-occupation of a dwelling within schedule 3 of the Town and Country Planning Act". The stated reasons for refusal were:

1. *The proposal would result in a market led dwelling in open countryside, without any recognised demonstration of need. The proposal would thereby compromise the Councils housing figures and its aims to provide an affordable dwelling within a sustainable allocated Key or Local Service Centre where a demonstration of need has been provided. The proposal is therefore contrary to Eden Local Plan Review Housing policies H1, H5, H6 and H7.*

2. *The proposal would not be tied to any acceptable identified enterprise which would allow it to be defined as an exception, and therefore to be built in an isolated location. Furthermore the dwelling would not be affordable dwelling nor would it be fettered by an occupancy clause. The proposal would therefore result in an unsustainable unjustified development, in an isolated location contrary to the spatial strategy aims of RPG13, and the guidance within PPG3 & PPS7.*

3. *The proposal would result in the introduction of a dwelling within an open field within an isolated location within the open countryside. The proposal would therefore have an unacceptable impact upon the open character of the countryside resulting in a visually intrusive development contrary to the aims of Eden Local Plan Policy NE1, PPS7 and Eden Local Plan Review Housing policies H6 & H7.*

Whether the land is capable of reasonably beneficial use

6. Where, as in this instance, a purchase notice is served following a refusal of planning permission, the Secretary of State must consider whether the relevant conditions specified in section 137(3) are satisfied. If those conditions are met, section 141(1) requires the Secretary of State to confirm the purchase notice, unless she takes the view that one of certain other courses specified in sub-sections (2) or (3) of section 141 would be appropriate or that the power in section 142(3) should be exercised.

7. Condition (b) in section 137(3) appears irrelevant in this instance, since it relates to land which cannot be rendered capable of reasonably beneficial use by virtue of the conditions of a planning permission. The relevant conditions are therefore (a) and (c), namely—

(a) that the land has become incapable of reasonably beneficial use in its existing state; and

(c) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted or for which the local planning authority or the Secretary of State has undertaken to grant planning permission

8. Special considerations apply to the determination of purchase notices:

- The onus is always on the server to establish his or her case and, as stated in paragraph 16 of the Memorandum to Circular 13/83, the Secretary of State would normally expect to see some evidence that the server has attempted to dispose of the relevant interest.

- There is no statutory definition of the term "reasonably beneficial use", but there is judicial authority on the subject in the case of *R v Minister of Housing and Local Government, ex parte Chichester Rural District Council* (1960) WLR 587. On the strength of that authority, the Secretary of State's view is that the test is not whether the land is less valuable to the owner than if developed in accordance with the owner's wishes. Instead, the test is whether the use is reasonably beneficial to the owner in all the relevant circumstances of the particular site.
- The Secretary of State also takes the view that a use which is only beneficial to the public at large is normally to be disregarded, having regard to the judgement of the High Court in the case of *Adams & Wade Ltd v Minister of Housing and Local Government and Another* (1965) 18 P&CR 60.
- The only exception to the principle of *Adams & Wade* is where land has a restricted use as undeveloped or amenity land, by virtue of an existing planning permission (section 142 of the 1990 Act provides for this eventuality). Where this is so, the Secretary of State need not confirm the notice if she considers that the restriction remains appropriate.

Your client's purchase notice has been considered against this background.

9. It is noted that, in their response notice, the Council contend that there is no evidence of any attempt by the owner to sell or let the land. The Council also argued that the land is capable of reasonably beneficial use for agricultural purposes. They stated that the land the subject of the purchase notice was not, and should not be considered, separate from the surrounding agricultural land. At the time of site inspection by Council officers the building was not separated from adjoining land by a fence. The fence was considered to be a recent construction, while the red line around the building had been drawn tightly, in the Council's view, to prevent any contention that a reasonably beneficial use could be made of it in the context of the surrounding or adjoining land.

Conclusions

10. On the available evidence, the Secretary of State is of the opinion that, in this countryside location, relatively low-value uses such as for grazing or the keeping of poultry are capable in principle of being reasonably beneficial uses to the owner (or to a prospective owner), either on its own or in conjunction with adjoining land¹.

11. No evidence has been submitted of any attempts to dispose of the owner's interest in the land, either by sale or by letting. As stated above, the Secretary of State normally expects to see some evidence of such an attempt when a purchase notice is served. No reason is seen to make an exception to normal policy in this instance. In the absence of such evidence in this instance, the Secretary of State is not persuaded that the land is incapable of reasonably beneficial use.

12. The onus is always on the server of the purchase notice to show that the land is incapable of reasonably beneficial use and, in all the circumstances, the Secretary of State is not satisfied that the land, either on its own or in association with adjoining land, is incapable of reasonably beneficial use as indicated above. The Secretary of State is therefore not satisfied that condition (a) in section 137(3) is met.

13. There is no evidence of any existing planning permissions that could be implemented or of any undertakings to grant planning permission. The other relevant condition in this instance – condition (c) section 137(3) – is therefore met. However, all the relevant conditions in section 137(3) must be met before a purchase notice can

¹ It is not clear that the adjacent land is the server's ownership, although this would appear to be the case

be confirmed under section 141(1) or alternative action taken under sections 141(2) or (3).

THE FORMAL PROPOSAL

14. For the reasons given above, the Secretary of State proposes *not* to confirm the purchase notice. In accordance with the requirements of section 140(2) of the 1990 Act, the Secretary of State hereby gives notice of her proposed action. Copies of this letter are, at the same time, being sent to Eden District Council as formal notice to them of the proposal.

RIGHT TO BE HEARD

15. Section 140(3) of the Act gives those on whom a notice of the proposed action has been served the right, within a specified period, to require an opportunity of being heard before any final determination is made. Accordingly, I would be grateful if you would inform the Inspectorate's purchase notice procedure section (**in room 4/03 Kite Wing, Temple Quay House**), not later than 27 July 2007, being not less than 28 days from the date of this letter, whether you require the opportunity of being heard by a person appointed by the Secretary of State for that purpose.

16. If any party requires an opportunity of being heard, the Planning Inspectorate will follow the procedure specified in the Town and Country Planning (Inquiries) Procedure) (England) Rules 2000 (SI 2000/1624) as far as practicable, even though these Rules do not apply to purchase notices. The parties will be asked to observe the spirit of these Rules. Please inform the Planning Inspectorate before the date specified in paragraph 15 above if you require an opportunity of being heard.

Yours faithfully



JOHN PARNELL
Authorised by the Secretary of State
to sign in that behalf