

Report from the Executive– Response to the Monitoring Officer report on the decision to release local land charge over Field 81 Pennypot Lane, Chobham, Surrey.

1. Background

- 1.1. At the meeting of the Executive on 21 July 2020, we received a report from the Monitoring Officer setting out that the decision to release a local land charge over Field 81 Pennypot Lane, Chobham, Surrey appeared to him not to have been taken in accordance with the processes and delegations in the Council's Constitution.
- 1.2. In accordance with the requirements of the Local Government and Housing Act 1989, we are required to consider the report and recommendations therein and prepare a report which specifies:-
 - (a) what action (if any) we have taken in response to the Monitoring Officer's report;
 - (b) what action (if any) we propose to take in response to the report and when we propose to take that action; and
 - (c) the reasons for taking the action specified in our report or, as the case may be, for taking no action.

A copy of this report will be sent to each member of the Council and the Council's Monitoring Officer.

- 1.3. Field 81 was subject to a local land charge in respect of clearance works undertaken in July 2006. The works were necessary to reinstate the land to its state of repair and condition prior to the occupation by travellers. The charge was registered on 10th July 2007. The original valued secured by the charge was £150,400 and in June 2018 the total amount outstanding was £318,756.32 due to accrued interest.
- 1.4. In November 2018 legal services removed the local land charge following reference to a meeting between the Council's Chief Executive, at the time, and the new owners and the new owner's assertion that they had received legal advice that the charge was not enforceable because it was personal to the previous owner of the land.
- 1.5. A request was made to Land Charges on 14th November 2018 to remove the local land charge and the charge has been removed.

2. The Monitoring Officer's findings

- 2.1. The Monitoring Officer's report made a number of findings, including:
 - The Constitution of the Council in force at the time the decision was made provided no delegation to legal services to remove land charges.

- The Council's Financial Regulations provided that the Executive Head of Finance (Section 151 officer) would critically review outstanding debts on a regular basis and take prompt action to write off debts no longer deemed to be recoverable. Financial Regulations also provided that no debt above £5,000 may be written off without Committee¹ approval.
- Removing the land charge left the Council with no effective means to enforce the debt, which can be said to be a form of debt write off. However, the fact that such debts are not recorded in the Council's financial statements perhaps helps to understand how a view could have been formed that these are not debts that apply to the Financial Regulations.
- The principal sum secured by the local land charge, together with accrued interest, was in excess of £100,000; proper consideration was therefore required on whether the decision was a key decision. One view might be that the release of a security without repayment is analogous to expenditure because it crystalizes the costs of the clearance works as actual expenditure. The schedule of key decisions has been reviewed and there is no record of the Executive making any decision to release the charge or delegate authority to an officer or Sub Committee to make the decision. Nevertheless, the Monitoring Officer considered that a Committee decision was likely required for the reasons set out above.
- It is arguable whether the decision to remove the charge was a key decision because this turns on whether or not the removal of a charge can be defined as expenditure.
- The lack of clarity in the Constitution on how to categorise local land charges may have led to some ambiguity on dealing with the release of such charges.

2.2. The Monitoring Officer concluded that, although there were some limitations to the information available to him when preparing his report, he was satisfied that there only appears to have been a decision which may be deemed procedural ultra vires.

3. Monitoring Officer's recommendations

3.1. The Monitoring Officer recommended the following action in his report:

1. That paragraph 13.3 (b) (i) of Article 13 of the Council's Constitution is updated as follows, with additional wording highlighted in red.

Key Decisions

¹ Financial Regulations refer to a Committee decision and in practice this would be an Executive decision.

(i) Key decisions are those:

- likely to result in expenditure, *release of any securities (except where any release is pursuant to a contractual obligation)* or savings of at least £100,000 or £100 million if it relates to treasury management matters *or there may otherwise be an impact on the Council's financial standing*; or
- likely to have a significant impact on people or organisations in two or more wards within the Borough
- which are made in the course of developing proposals to the Council to amend the policy framework.

The Executive's response:

We support this recommendation and will ask the Chairman of the Governance Working Group to add consideration of this item to the Working Group's Work Programme. This was discussed with the Governance Working Group on 20 August 2020 and added to its Work Programme.

2. The Council's Section 151 officer gives consideration to whether it is appropriate that debts secured by local land charges should appear in the Council's accounts as assets.

The Executive's response:

We support this recommendation and will ask the new Section 151 Officer to consider this upon commencement of his employment with the Council.

3. The Constitution is updated to confirm specifically that no officer may release any security, warranty or guarantee in favour of the Council, unless contractually obliged to do so, without the written approval of the Council's Section 151 officer or relevant Committee.

The Executive's response:

We support this recommendation and will ask the Chairman of the Governance Working Group to add consideration of this item to the Working Group's Work Programme. This was discussed with the Governance Working Group on 20 August 2020 and added to its Work Programme.

4. Recommendations arising from the Executive meeting

- 4.1. At the Executive meeting on 21 July 2020, we heard a recommendation from other Members of the Council that a formal inquiry be undertaken by an outside body/ organisation.

The Executive's response:

We are mindful that the Monitoring Officer's report was about the Council's decision making processes and whether they were followed, rather than addressing the merit of the decision to remove the Local Land Charge. We sympathise with the request to hold an independent investigation. However, having considered it carefully and taking into account the anticipated

limitations of this investigation, we do not believe that on balance this should be pursued.

5. Further recommendations

- 5.1. We have considered whether any further actions can be undertaken in response to the Monitoring Officer's report and are not proposing to make any further recommendations at this time. This may change in the event that further information or recommendations are presented to us.

Councillor Alan McClafferty	Leader of the Council
Councillor Colin Dougan	Deputy Leader of the Council Business & Transformation Portfolio Holder
Councillor Josephine Hawkins	Support & Safeguarding Portfolio Holder
Councillor Rebecca Jennings-Evans	Places & Strategy Portfolio Holder
Councillor David Lewis	Finance Portfolio Holder
Councillor David Mansfield	Environment & Health Portfolio Holder
Councillor Adrian Page	Planning & People Portfolio Holder