



RECOMMENDATION REPORT

DECISION: 14/2024	DATE: 12TH AUGUST 2024
TITLE: The purchase of small plot of land adjacent to the new Chorley Police Station site	
AUTHOR: ANDREW LOVATT/LAURA WHALLEY	
SPONSOR: CRISSIE MARSHALL-KIMBERLEY, HEAD OF E&FM	
Executive Summary Following the purchase in July 2023 of the former Runshaw College site for the proposed New Chorley Police Station (NCPS), the Constabulary has the opportunity to purchase a small and adjacent plot of land for £1, subject to legal costs. Ownership will provide the benefit of control in this corner of the site, which is visually unappealing due to a build-up of debris, and to improve the configuration of the proposed car parking area.	
Recommendation The Police and Crime Commissioner is recommended to proceed with the purchase, provided that the Constabulary agrees to be bound by specific covenants, detailed in the attached background paper. The covenants outlined are determined as inconsequential to the plot under consideration for purchase, due to factors explained in the following sections. Therefore, proceeding with the purchase as recommended is considered to be beneficial and at minimal risk.	

PART II

1. Background and Advice

Following the purchase of the former Runshaw College site for the proposed New Chorley Police Station (NCPS) in July 2023, an approach was made to the owner of a small and adjacent plot of land to establish if they would consider gifting the land to the Constabulary. The land appears to be totally disused and is presently very unkempt with rubble and general debris.

The owners, BAE, have agreed to the disposal of the plot for £1, subject to their transactional legal fees being paid. This plot forms part of a much larger parcel, which in the main is the remaining land holding after BAE have sold large tracts of land over the years to developers for the Buckshaw Village scheme.

Ownership of the plot will “square off” the boundary for the NCP site and create space for additional parking. To exclude the area will leave an unsightly corner which is quite prominent from the adjacent road bridge. Exclusion from ownership may also add to new boundary treatment costs due to fencing around additional angles.

2. Links to the Police and Crime Plan

This recommendation aligns with the PCC’s overall strategy for managing the Constabulary’s estate efficiently and effectively. The acquisition will allow the force to optimise the use of existing facilities by creating space for additional parking, therefore improving operational capabilities, and will eliminate potential future costs and operational problems that may arise from fragmented property management.

3. Consultations

Consultation throughout the initial proposal stages has been carried out with the Constabulary’s external legal consultants. In addition, regular consultation and clarification around the land title and the proposed disposal of the land have been ongoing with legal representatives for BAE Systems.

4. Implications:

a. Legal

The benefits of bringing this area within the control of the Constabulary are mainly of a physical and practical nature, rather than legal, although the land remaining in third party ownership may potentially create future operational problems.

Proceeding with the purchase will commit the Constabulary to agreeing to be bound by certain covenants. However, for the reasons stated in the attached background paper, these are deemed to be either not applicable to that plot, as they specifically relate to other areas of the registered Title of which the plot forms a part, or they will not apply as the physical factors which are obliged to be maintained are not present on the plot.

The alternative is to proceed with attempting to have the covenantors agree to the removal of the covenants, but this course of action has no guarantee of success and would potentially be expensive and protracted.

b. Financial

The purchase cost is £1 plus legal fees. Due to the complexity of the legal title, the total fees are expected to be in the region of £20,000, to be funded from the NCPS project budget.

c. Equality Impact Assessment

N/A – there is no equalities impact in making this decision.

d. Data Protection Impact Assessment

N/A – there is no DP impact in making this decision.

5 Risk Management

The risk of not purchasing the plot is that there is possible impact through the adjacent ownership of this piece of land in its proximity to ours, e.g. access around maintenance. It also impacts on our plans for optimal utilisation of the site, albeit to a limited extent.

The risk of purchasing the site is very low for either of the stated options around dealing with the extant covenants.

Method 1 - Complete a Deed of Covenant

The risk associated is low with this option, in that it is mitigated by the covenantor's land being remote from the plot of land that we are looking to purchase. Arguably there is no diminution to the value of their property by a breach of a covenant (each of the four are located along Buckshaw Avenue approx. ¼ mile to northeast of the site)

Our solicitor will ensure the deeds are drafted to only bind the Constabulary "in so far as the covenant relates to the [plot]". In other words, the liability imposed by the individual covenants would not be enforceable against the Constabulary if there was a breach relating to another part of the Estate.

Method 2 – Seek to obtain a release from the Covenant

The risk associated with this option is that there is no guarantee that the outcome would be achieved and there are potentially significant legal costs associate. This option is also protracted and if we are not able to achieve the desired outcome, we will need to revert to method 1. This would prolong the purchase of the land and potential impact on the New Chorley Police Station Project. Additionally, the land would need to be maintained by BAE systems, during the protracted period, which would require them to gain access across our land to carry out maintenance.

6. Background Papers

The attached paper describes the requirement to either agree to uphold certain covenants which apply to the plot or negotiate their release, with a recommendation to proceed with the first and simplest method and the rationale for doing so.

7. Public access to information

Information in this form is subject to the Freedom of Information Act 2000 and other legislation. Part 1 of this form will be made available on the PCC website within 3 working days of approval. Any facts/advice/recommendations that should not be made available on request should not be included in Part 1 but instead on the separate Part 2 form.

The information will in time be publicly available through Land Registry records.

APPENDED BACKGROUND PAPER

REGISTERED TITLE (No. LA838368)

The subject plot being acquired is a very small area of the title (the 'Estate') and is separated from the remainder by the railway line.

The title of the Estate is affected by seven covenants. They are detailed below but are generally positive covenants to keep certain physical features in good repair.

One covenantor has agreed to the release of their covenant (listed as "G" below), leaving six.

A further two ("E" & "F") are not applicable to the subject plot as they relate to a separately defined areas of the Estate. The plot is therefore not bound by these restrictions, leaving four to be dealt with in order to complete the purchase to the satisfaction of the Land Registry. The purchase cannot be registered without compliance on the title or removal of the covenants.

The Constabulary needed to adopt one of two methods. The purpose of this paper is to provide the rationale behind the decision.

Summary of methods

Method 1 – Complete Deed of Covenants

- Quick conclusion
- Low-cost option
- Potential risk, although perceived to be low
 - The risk is further mitigated by the covenantor's land being remote from the plot and arguably there is no diminution to the value of their property by a breach of a covenant (each of the four are located along Buckshaw Avenue approx. ¼ mile to northeast of the site)

Method 2 – Seek to obtain release from covenants

- No guaranteed outcome
- Higher costs – both legal fees and settlement figures
- Protracted process
- Will need to revert to method 1 if Method 2 fails

Method 1

Sign four Deed of Covenants agreeing to be bound by the four covenants. Such deeds are not signed by the beneficiary, although copies need to be sent to them at the address on the Land Registry documentation (there is no requirement to trace them if the address is incorrect). The deeds will not be publicly available.

The solicitor is ensuring the deeds are drafted to only bind the Constabulary "in so far as the covenant relates to the [plot]". In other words, the liability imposed by the individual covenants would not be enforceable against the Constabulary if there was a breach relating to another part of the Estate.

This is a guaranteed method of ensuring the purchase is concluded. It is also the quickest and most cost-effective method, but potentially could be creating a future risk, although pragmatically, the risks are low for reasons explained below.

It has been confirmed that indemnity insurance to cover the risks of breaching any of these covenants is not available.

Method 2

Obtain release from the four covenants from their beneficiaries. This would dissolve the Constabulary of any risk in terms of liability.

Although only deeds are required under Method 1, some of the covenants benefit multiple parties and gaining their release will need agreements with nine separate parties.

The process will involve tracking down those parties, but note they are not obliged to agree or respond in a timely manner. If they did proceed, they will presumably wish to obtain legal advice, doubtlessly at the Constabulary's expense and then seek to extract an unquantifiable payment.

As well as unknown costs, because of the number of stages and parties involved, potentially this could take a considerable time. Additionally, two of the parties are off-shore trusts, which may result in further delays.

In the event that not all agreements are reached, the only available recourse is then to revert to Method 1 above, although in that event, there would at least be an audit trail that attempts have been made to mitigate the risk to the Constabulary.

A) Transfer dated 16/12/2005 made between Chorley Council and Lex Multipart Ltd Covenant

There is a provision in this agreement that no part of the Estate can be sold or leased without a deed in favour of the Council covenanting to maintain ponds and surface water pipes over the Estate and which benefit the land registered under title LAN25639, (which is approximately ¼ mile to the northeast of the site), i.e., the "servient" land.

Comment

There is no pond on the subject plot but if there was, it could not conceivably be argued to be of benefit to the servient land.

The previous drainage survey did not reveal any public or private surface water pipes on the plot being acquired, but if there were, it is unlikely they would be of benefit to the servient land due to distance.

The beneficiary's land is remote from the plot

The risk of adopting the simpler Method 1 is therefore low.

B) Transfer dated 03/11/2006 between BAE Systems (Property Investments) Ltd and Helioslough Ltd Covenant

There is a provision in this agreement that no part of the title can be sold or leased without a deed in favour of the current proprietors of LAN43951 (four parties) and LAN43953 (two parties), covenanting to repair the service media and access roads, including their landscaping, on the Estate until adopted, and empty foul water collection tanks.

Method 1 or 2 needs to be actioned. Method 2 will involve agreements with six individual parties.

Comment

As there is no known service media on the subject plot or evidence of foul tanks, the risk of adopting the simpler Method 1 is low.

C) Transfer dated 22/11/2006 between the same parties as (B) Covenant

The covenants in this agreement are the same as (B) above in favour of the current proprietor of LAN54888 (one party). This site is close to one of the above two title areas.

Method 1 or 2 needs to be actioned.

Comment

As (B)

D) Transfer dated 23/12/2005 between the same parties as (B) above

The provisions in this agreement are the same as (B) above, plus a further covenant not to disrupt electricity supply to a substation on the Estate. They are in favour of the current proprietors of LAN43951 (four parties), LAN43953 (two parties) as in (B), plus that of LAN26620 (one party).

Method 1 or 2 needs to be actioned. Method 2 will involve agreements with seven individual parties.

Comment

It is known from the purchase of the former Runshaw property that ENW cables do not run through subject plot. The risk in adopting Method 1 is therefore minimal.

The “no risk” covenants

E) Transfer dated 20/12/2011 between BAE Systems (Property Investments) Ltd and Persimmon Homes Ltd

Covenant

There is a provision in this agreement that no part of the title can be sold or leased without a deed covenanting to maintain estate roads and keep them free of obstruction. The provision relates to a specific area of the title and the solicitor has confirmed the subject plot does not fall within the area bound by the restriction.

Only a certificate signed by the solicitor to HMLR is required, stating that the restriction does not apply to the transfer.

F) Transfer dated 16/01/2013 between BAE Systems (Property Investments) Ltd and Charles Church Developments Ltd

This is precisely the same as the above.

G) Agreement dated 04/10/2013 between BAE Systems (Property Investments) Ltd and Redrow Homes Ltd

This requires a certificate to be signed by Redrow stating that provisions in this agreement have been complied with or do not apply. Redrow have confirmed that their covenant does not affect the subject plot and have agreed to a release of this covenant on the plot. BAE’s solicitors are awaiting the appropriate form from Redrow.

Comment

Once obtained, this will remove this obligation and eliminate all risk from this covenant.

Decision & Rationale

Method 2 presents the “belts and braces” approach, but only if successful in obtaining consent from the covenantors. As such, the Constabulary’s solicitors recommend proceeding with method 1, due to this uncertainty and other reasons below: -

- a) The uncertainty of being able to contact the covenantors in Method 1, or if contact made:
 - i. The uncertainty they would agree to the release
 - ii. The unknown cost factor of negotiating the agreement

- b) The need to revert to Method 1 if Method 2 wholly or partially fails, thus wasting time and escalating solicitor costs
- c) The low risk of adopting Method 1 due to the plot not having any of the features that we are agreeing to maintain – pond, surface water pipes, service media, access road, foul water tank, mains electricity
- d) In the very unlikely event of a breach coming to light, there is an argument that such a breach does not impact upon the beneficiary's land due to distance and therefore no monetary loss to them in terms of diminished value.