

### **Submission from Councillor Boddy**

It is stated at 118 (b) in the advice documentation there is no viable alternative to compulsory purchase.

(1) Is that actually correct?

(2) Why would it not be possible for the Local Authority to simply apply to the Land Registry to register possessory title to the land it is proposed should be compulsorily purchased, or all the land, in this parcel of land to which title is so far unknown and unidentified?

(3) As with all purchasers who buy only possessory title, why wouldn't the opportunity be there for any purchaser, (who subsequently purchases all or part of this land from the local authority), to acquire defect of title insurance?

(4) If the Local Authority took this alternative course of action; when the time comes to sell the land, couldn't the land be sold with a recommendation or advice that any purchaser, (who purchases all or any part of the land from the Local Authority), must acquire defect of title insurance?

(5) Could not an undertaking be required of any purchaser to buy defect of title insurance as they acquire the land or any part of it from the Local Authority, and make that a requirement for any purchasers who subsequently bought properties on the development from them?

(6) If this course of action was followed, at some future point, if an owner came forward, wouldn't the developer and their defect of title insurers (if any) and any future home owners who bought properties on the development, carry the cost of future litigation, in the usual way?

(7) If the matter is dealt with as proposed, by compulsory purchase, is there an unnecessary potential for the Local Authority to carry that cost of litigation into the future?

(8) Couldn't litigation be brought under common law or statute including under human rights legislation which may be costly to the Local Authority if compulsory purchase is used?

#### **I remind councillors of points 122 to 126 of the advice.**

(9) After the registration of possessory title, the opportunity for an owner to come forward for an adult with capacity expires after 12 years does it not?

(10) What communications (if any) have officers had with the Land Registry or any other government department?

(11) What communications (if any) have officers had with major public authorities, the Church of England, water companies and railway authorities?

(12) Has the local authority already applied to register possessory title, to prevent someone else potentially applying for possessory title earlier and creating what is known colloquially as a "ransom strip"?

(13) Why must the local authority carry the cost of improvements to the access?

(14) Wouldn't the costs of improvement to the access be better left to fall upon any developer as they purchase this land?

(15) When did it become the responsibility of the Local Authority to provide potential developers, opportunities for development entirely without normal every day insurable risk, any private

individual house purchaser might be expected to take, when purchasing a house, land, garden or garage?

(16) Is the proposed action of the council ultra vires?

(17) Why do officers regard the alternative course of action as unviable?

(18) Isn't all advice from conveyancing solicitors insured?

(19) Wouldn't the home owners who purchased any property on the development, from the developer, be able to have recourse to their own solicitors indemnity insurance, if their conveyancing solicitor failed to advise them properly, to take out defect of title insurance, when they buy any property, on this development, in all these circumstances?

(20) Don't conveyancing solicitors have the option to refuse to continue with a client's instructions, decline to act further and tell a client to go elsewhere, if a potential purchaser refuses to take out the appropriate defect of title insurance?

### **Response to Councillor Boddy**

The questions raised relate to the proposed compulsory purchase by Darlington Borough Council of land at Snipe Lane, Darlington.

This land is proposed to be compulsory purchased to facilitate the development of land owned by the Council and a private sector developer. The proposed development is mixed social and affordable housing, it will provide an income for the Council together with a substantial number of affordable dwellings for those who most need them in the town.

The land to be purchased is required for access purposes, including the dedication of new highway. No properties will be located on the land to be acquired; it is however required to provide access and to facilitate public transport routes to the development. Without this access being brought into the Council's ownership, it will not be possible to bring the proposed development forward.

At present, the land comprises a private road providing access to a number of properties and over part of which Footpaths 14 and 17 run, and there is also a small triangle of land to the north east which is currently bare land. As such, significant parts of Snipe Lane are subject to public rights of way on foot (technically rendering them 'highway') and as a matter of law possessory title cannot be acquired at any time over highway. Moreover, as no part of this land is occupied by the Council, exclusively or otherwise, no application to the Land Registry may be made under the provisions for adverse possession. Further, an application under the doctrine of *ad medium filum* (a presumption that the owner of land on both sides of a road may claim ownership of that road to the midline) cannot be used in this situation, as it is a rebuttable presumption and would not provide sufficient certainty that the road could be adopted. (Insurance is often available to guard against deficiencies in private access rights, but for a development involving many hundreds of houses accessed from an adopted highway, such insurance would not be available at reasonable (and possibly at any) cost.)

Officers have sought Counsel's advice on the various options for acquiring this land; the advice received was unequivocal, in order to acquire title to all of the land required for development, compulsory purchase is the only viable option available to the Council.

Further to the above introduction, I will now address the questions raised in turn:

1. Please see above, all other options have been explored fully by officers, the compulsory purchase procedure is the only viable option available to bring the land into the Council's ownership;
2. The Council does not occupy this land and it is in part subject to public rights on foot (i.e. it is already in part highway); therefore the Council cannot apply for possessory title;
3. Please see above and response to question 2. Further, the land is required for highway purposes, title will not pass to any later purchasers;
4. Please see above;
5. Even if this were viable, it would be an approach that would be likely to slow very greatly the sales of any properties. Please see above;
6. Please see above;
7. The compulsory purchase procedure will prevent any future litigation in respect of ownership of the land. Once confirmed, the Order will permit the acquisition of absolute title by the Council. Full compensation for loss of any relevant property or rights is an integral part of the CPO process, with a statutory code - the Compensation Code - that limits the scope and value of claims;
8. Please see above and answer to question 7;
9. If possessory title is obtained, the holder of such title may apply to the Land Registry to upgrade the title to title absolute after the expiration of 12 years. In the current scenario, for the reasons explained above and below, this is not applicable;
10. Officers have investigated title to the land in the same way as for all property transactions. A caution against first registration of the land has been registered in order to prevent such a "ransom strip" scenario arising;
11. Please see above and answer to question 10;
12. No application has been made for the reasons detailed above; another person would also be unlikely to make such a claim for the reasons detailed;
13. The costs of bringing the access up to adoptable standards will be borne by the joint venture developer. The Council is merely bringing the land into its ownership in order to bring the adjoining land forward for development;
14. Please see answer to question 13 above;
15. This is not the situation in this case;
16. No;
17. Please see responses above;
18. Yes, if the solicitors are regulated by the Solicitors Regulation Authority, rule 3.1 of the SRA Indemnity Insurance Rules requires solicitors to carry adequate and appropriate insurance cover;
19. There is a significant risk that without adoption of relevant access as highway it is unlikely that solicitors would advise their clients to purchase houses on the scheme even with defective title indemnity insurance. Without the full facts of a scenario such as that raised in the question it is not possible to comment;
20. Please see answer to question 19.

In conclusion, for the reasons stated above, the compulsory purchase procedure is the only viable option for the Council to acquire the land necessary to allow for the development.