

HOWE GREEN COMMUNITY ASSOCIATION

WESTLAND SUB-COMMITTEE MINUTES

Date: Friday 27<sup>th</sup> November 2009

Venue: 9 Chalklands

Present: David Pearson  
Richard Spooner  
Vic Morgan  
Neal Whitelaw  
Paul Tremelling  
Dave Dennison  
Mick Piper (Minutes)

Duration: 8 p.m. – 10 p.m.

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NW/PT were present to represent the views of the third party syndicate (“TPS”) of which they are part along with Richard North. The ethics of being part of the HGCA effort and the TPS were raised, but NW explained to the meeting that it was and always had been their intention to be part of the HGCA effort, but after the first meeting when only £38,000 was raised as a fighting fund they were concerned that the HGCA effort might falter, so they began to consider alternatives. PT/RN live beside the entrance of the land and NT lives across the road . TPS can raise £100,000 by themselves but would have to move money out of other investments; they could raise this as cleared funds within the necessary time scale. However, TPS could not commit this sum of money just to the HGCA effort and would have to see something back for the investment, i.e. ownership of the land. TPS felt if they bid for the land it would save the HGCA having to bid for it, and HGCA could perhaps bid for other land to protect it, if it came up for sale. When elected directors of HGWL NW/PT had no thoughts whatsoever of a private bid for the land. NW commented that he had offered to underwrite the HGCA deposit and had also subscribed to HGWL. Only aim is to safeguard the village. The meeting accepted this explanation.

Asked why TPS had not committed all their funds to HGWL, NW noted that if they were to put £100,000 in they needed an asset to own on the back of it, and if their money went in to the association it would stay in the village and they would not see it again. It was noted that HGCA does not have to own the land, the aim being just to stop travellers getting on it. HGCA could sell it to other parties such as the 18 houses adjacent to the land, or to TPS with suitable covenants. So TPS could still end up with what they want and we could avoid bidding against each other. NW feels that the land would normally be worth about £20,000. If HGCA bid the land up to £80,000 first and pulled out, TPS would have to start bidding at £80,000 which is already 4 times the true value of the land. Travellers may not even bid for it as there are better, flatter pieces of land available elsewhere. The Legal Packs only came out today and until this came out TPS could not say for definite they could bid.

Noted that we don’t want to end up in a fractured community and we want to be together on this. Conversations with the lawyers today indicate that there are ways that TPS can pitch in with HGWL and get what they want, and we get what we want. Together we would be stronger. We could not

top up the TPS bid, but there is a way in which we could co-operate. If TPS came in with HGWL, upon acquisition of the land we could have an agreement that says that the land would be sold on to TPS at the purchase price subject to a covenant restricting sale to travellers, or a refuge dump or a nuclear power station! The majority of people don't actually want to own the land, just to make sure that it is safe and to get their money back if possible. And for people adjacent to the land, having extra land will increase the value of their properties.

It was suggested as a way forward the TPS members increase the amount they put in to shares of HGWL on the basis of a Heads of Agreement that says if HGWL buys the land it will transfer it to TPS at the same price, but with the addition of covenants. If they put in 50% of the capital, they could have 50% of the land with the covenant added.

As an example it was said that if HGWL had £80,000 and TPS put in £20,000 to subscribe to HWGL and the land was purchased for £90,000. First of all there would be £10,000 cash in the bank which is excess funds which would be returned to TPS; secondly TPS would be in to the tune of £10,000 of the purchase price of the land of £90,000, hence would be in for 1/9<sup>th</sup> of the land. So, if TPS wanted it could buy the whole of the land for £90,000 and would get back from HGWL the TPS £10,000 share capital. It was noted that the thing that is different in this proposal is that you can effectively convert shares into land. If HGWL has an interested group now, such as TPS, HGWL can say that if we buy the land (with your support) we can sell the land to you at cost but with the covenants. We might not need to use your money but it would be there if we had to fight for the land. We might get it for £30,000 in which case we would transfer it to you for £30,000. The subscribers would hopefully get the majority of their shareholding refunded as the land is sold on.

RS felt that it had been agreed at the meeting that we let the syndicate bid; DP noted that this was discussed at the meeting but the recording showed that it was not seconded and voted on.

DD summarised the way the present proposal would work

- The syndicate would put money in to HGWL
- HGWL would have a greater fund with which to bid
- HGWL would do the bidding as we agreed (Option 2)
- Land would be transferred to the syndicate afterwards

The syndicate doesn't have to have the money today; we have the deposit and they would just have to have cleared funds in time to pay after the auction. So again, in summary

- We would have what we want as we would have a bigger fund and would have much more chance of winning
- We would be doing the bidding and could attach covenants to the land on acquisition
- They would have what they want as they would get the land as an asset in return for their investment and would avoid a bidding war
- What happens to the land in the future, subject to the covenants, would be up to the people who owned it then.

The vote at the previous meeting was 33 to 12 that we do not bid against the other syndicate, but under the proposed way of doing things we would not be bidding against them as they would be coming in with us as shareholders in HGWL.

It was felt that we were quite close to getting somewhere. HGCA had raised cash through subscriptions to make a bid so we can't turn round and say to the subscribers we are not making a bid; if we say we are going to pledge our money to someone else a lot of people will back away; if

the syndicate joins is we are in a position to make a bigger bid if necessary; then what ever we buy the land for we transfer it to the syndicate at the same price with covenants attached.

A few minutes was devoted to talking about the covenants and it was asked if this is going to be a simple covenant saying that the land will not be sold to travellers? It was agreed that it would have to go a little beyond this as travellers do not represent themselves and it would be difficult to know if travellers were buying it. It could be a covenant that the HGCA vets who is buying it rather than saying that it can't be sold to travellers. Our solicitor said today that it is much easier to put in what you can't do rather than what you can do. You could say that if the land were going to be sold on at a price it must be first of all offered back to HGCA at that price. If TPS were to be coming in with HGWL then the covenants are one of the most important things for them to be happy with as it could restrict what they do with the land in the future.

Overage was discussed. If you sell the land at a profit in the future 15% of that profit goes back to Persimmon as "Overage". We could put in a small percentage of Overage to go back to HGCA to satisfy all of our people. Noted that you don't actually have to sell it to trigger Overage; just getting Planning Permission could trigger it as there would be an implied increase in value of the land.

Covenants could cover mobile homes, industrial plant, landfill, etc which wouldn't prevent you from using it for recreational purposes and ultimately applying for Planning Permission. There may possibly be a condition that if they want to sell it they first offer it back to HGCA, but the solicitor had advised that it was easier to say what they couldn't do with the land rather than what they could do. PT noted that the chance to have extra land and turn it into something equestrian was attractive.

PT noted that Tracy Kirkham might be interested in the land at the far end but didn't have the cash at the moment, but PT had spoken to Mr. Kirkham about this and he may be interested in helping.

Noted that whilst travellers would be of concern to the village as a whole, it would have a much larger impact on the adjacent houses; the majority of the support was coming from people who are not adjacent as the village wishes to show support to them.

It was agreed that we would draft "Heads of Agreement" and NW/PT would then speak with RN.

DD summarised the stage of the discussions

- HGCA would be doing the bidding
- We would have the benefit of the knowledge that if we would have another £x,000
- The syndicate would not bid
- We haven't set up a company as yet but we have been told today that we could buy it with a cheque from HGCA; the funds we are holding would go to our solicitor and they would deal with the actual purchase.
- We would get agreement from the committee tomorrow that we would offer to TPS the land at that purchase price.....with the covenants added..... we might be slightly out of pocket with our legal fees but we don't need to worry about this
- The extra money that you put in would be as a shareholding like everybody else
- Covenants would say no mobile homes, no industrial use etc
- There may be a small Overage... say 5% .... In favour of HGCA so we could tell our people that there was something coming back in to the community if it is sold.... Although this could be argued about
- When the land is sold on it could be offered in the first instance to HGCA at the same price you had negotiated for sale, so we could consider a bid

It was questioned whether we should restrict future sale by auction; however it was noted that the more restrictions that we try to put on TPS the more difficult it is for them and to do a deal, so we should instead rely on the covenants.

It was questioned what the HGCA attitude would be to houses being built on the land in the future if say in 20 years Green Belt restrictions change; it was generally felt that there would be no objection for it being used for houses in the future. It was noted that if TPS got planning permission for houses in the future there would be no way that HGCA could afford to buy the land (at building plot prices)!

The chances are that planning permission will be given in 10, 20 or even 50 years; the council has even said that affordable housing would be acceptable but the land is too big for an affordable housing development.

A lot will depend on access as they are unlikely to allow a large volume of traffic to come out on to a small road like the old A130 now it has been restricted.

It was agreed that these heads of agreement are workable; PT/NW would have to get RN's agreement to the proposal and that the sums of money would need to be discussed. It was questioned what would happen if TPS put in £40,000 and it was added to our £80,000, (to give a fund of £120,000) and we bought the land for £40,000. DD responded that it was simple – they, TPS, would get the land for £40,000 and we (the subscribers) would all get our money back. What is wrong with that? It has been agreed that if there are excess funds the largest subscribers would get their money back first, so in this example TPS would get £36,000 back.

In summary again:

- If we bought it for £40,000
- We immediately sell it to them for £40,000
- They give us £40,000
- What have we got in the bank? All the money we started with
- They get their shareholding money back and everybody else gets their money back
- Subject to say everybody having to pay say £25 each for our costs
- Wouldn't you have a happy bunch
- You (TPS) do what you want with it subject to no mobile homes .... (the "covenants")

Concern was expressed that we have already agreed to an "excess funds" pay back. However, it was noted that despite what has been agreed and minuted already, if you have an all-singing all-dancing solution which achieves the objective, gets covenants on the land, and people get their money back who would vote against that? We are not property developers and this is a simple and clear proposal.

It was noted that pay back of excess funds as previously agreed is not inconsistent with this proposal. PT gave the example; he puts in £40,000; only £2,000 is required by HGCA so he gets £38,000 back (excess funds), so he adds £2,000 to this £38,000 he gets back to make £40,000 to buy the land, and when HGCA has the £40,000 for the land sale he, as a subscriber gets his £2,000 back. This is just the same as saying to him that we would sell it to him for £40,000, and as we have £2,000 of his already he has to pay £38,000 more; it's just like an extra step to follow the excess funds commitment that has been agreed.

RS noted that care would have to be taken if we had an Overage clause in, as Overage can be triggered by change in value of the land and it did not have to be a sale; DD noted that this does not have to be the case and we could just have "Sale" as the trigger of any Overage.

It was agreed at this point that PT/NW would go and discuss the proposals with RN; the committee turned to discussing the Heads of Agreement document.

RS was still concerned that we had been given a mandate and that we would have to get a new mandate approved; it was noted that a mandate should be voted upon by "subscribers" only, and that the discussion and vote previously was a general HGCA one, not subscribers. The priority was that we bid for the land (Option 2), and that is what we are going to do.

DP noted that other options should also be considered. Tracy Kirkham ("Richmond") is also interested in acquiring land. It was agreed that we should at least talk to them to ensure that they do not bid against us. They might possibly go in with TPS as the Kirkham property is at the far end of the land for sale.

It was noted that we were waiting to hear from Mike Kirkham who was hoping to bring along Dave Bishop (Rettendon) who may also have some interest. Dave Bishop may just go along with a cheque pre-auction and buy it. It is possible that they would sell it pre-auction if say an Overage of 25% was offered and the buyer was not worried about the access issue.

It was noted as a point of tactics, that before the auction starts we should ask the auctioneer publicly in the room if there are any issues with access and protected trees. This would force them to summarise the situation re Adverse possession and might scare off potential buyers. It was noted that this is in the Legal Pack. The Adverse Possession only applies to a strip of land 300 ft by 13 ft alongside the North's property and not the total frontage on to the old A130.

DP commented on a point concerning the Overage being triggered by a planning permission application: you are permitted to use the land for a single dwelling house subject to use as an agricultural occupation equestrian horticultural or forestry purposes including retail sales; if we wanted to use it as amenity land it is a change of use which could trigger Overage.

Whilst it was noted that use of the land for community use had been considered, some members thought that people would rather get their money back, if given the choice.

PT/NW rejoined the meeting as RN was not available this evening. A brief discussion followed, and Heads of Agreement have since been drafted. Figures of £80,000 for HGWL share subscription and £100,000 for TPS funds would be used as examples in the draft Heads of Agreement.

It was noted that now that the Legal Pack has been issued the TPS syndicate members were quite happy for people to know who they were. Also, if discussions proceed with the Kirkhams there is the possibility of the Kirkhams joining TPS if they can agree amongst themselves. TPS noted that if there is another third party who was willing to put in say £200,000, then HGWL should tie up with them instead of TPS. Agreed that this was unlikely to be the case.

The meeting ended on the understanding that PT/NW would discuss the proposal with RN and revert a.s.a.p.

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