

ISSUES RELATING TO OWNERSHIP AND LACK OF CONTROL OF LAND

In the beginning, back in March 2023, the planning application form included a Certificate C in respect of ownership:

“I certify/The applicant certifies that:

- **Neither Certificate A or B can be issued for this application**
- **All reasonable steps have been taken to find out the names and addresses of the other owners (owner is a person with a freehold interest or leasehold interest with at least 7 years left to run) of the land or building, or of a part of it, but I have/the applicant has been unable to do so.”**

The certificate should have provided details of the steps taken (to ascertain the names and addresses of owners) prior to a newspaper notice which is claimed to have been published on 15th March 2023. A copy of such newspaper notice should also have been provided to the Council.

On 13th August 2024, the following details were sought:

“While on the subject of title, I note that Certificate C (re ownership) was used in the planning application form dated 27 March 2023. Please would you clarify what steps were taken to ascertain the names and addresses of owners. Please would you also provide a copy of any newspaper notices that your client has given in the application and appeal in connection with Certificate C.”

Unfortunately, we still do not know what steps were taken prior to the newspaper notice. Nor have we received a copy of such newspaper notice. Nor have we received a copy of any newspaper notice given in the appeal in connection with Certificate C.

There is an argument that, if section 65 of the Town and Country Planning Act 1990 precluded entertainment of the application in the first place, then an appeal arising from non-determination of that application is itself unentertainable (which is separate and distinct from the argument that an appeal cannot be entertained if it has not been made by a legal person). Of relevance to this issue is a letter from a resident of Grace Close. That resident claims partial ownership of the Williams Rhyne and also queries whether statutory obligations have been complied with in the application and in the appeal.

It is also unfortunate that a copy of a conveyance dated 8th August 1986 and transfer dated 26th April 2013 have not been forthcoming. And while a copy of a potential licence in relation to land to the west of the Strawberry Line has been forthcoming, a copy of the option/contract documentation from which this stems has not been provided.

The limited extent of the land to be bound by the s106 agreement

We are in a situation in which the only land to be bound by planning obligations, and for which a title warranty will be forthcoming, is as follows:

- The land shown edged red on title plan AV125643 (Matthews)
- The land shown edged red on title plan ST359846 (Pratt and Hodge)
- The land shown edged red on title plan AV101173 (Pratt and Hodge)

These comprise a smaller area than that shown on the amended plan which was submitted to the Inspector on 11th October 2024, which in turn was a smaller area than that shown on the appeal site plan.

Some sensitivities, including features shown on the Habitat Map inhabiting page 8 of the shadow HRA

It would appear that sensitive areas shown on page 8 of the shadow HRA (Habitat Map), such as hedgerows and ditches, are not within the red edging shown on the three title plans. The bullet points on pages 5 and 6 of the shadow HRA, such as the following, should be noted:

- **“Existing hedgerows totalling 266m (H1, H6, H7 and H11) will be enhanced through infill planting and sympathetic management.**
- **858 linear meters of new species-rich hedgerow with trees and new species-rich hedgerow with trees associated with a bank or ditch will also be planted (579 linear meters of which will be available to horseshoe bats)”**

One point which has been raised is that H11, H12, H13, H14 and H15 appear to be within Caution Title ST308582; which suggests that an Anthony Williams, a Robert Williams and a Terence Charles Richard have an interest in such land.

The inappropriate nature of the proposed Licence of mitigation land to the west of the Strawberry Line

The form of licence which Mr Matthews proposes to grant to the developer does not commend itself. For example:

- It would be a mere licence which confers non-exclusive rights. The licensor and his employees, servants and agents would retain use and ownership of the land.
- The licence would be personal to the licensor and licensee and would not be enforceable by the Council. For example, the Council would not be able to prevent termination of the licence under clauses 7.1.1 or 7.1.2.

- Clause 5.2 suggests that Mr Matthews could grant leases to third parties for periods of seven years and such tenants would not be bound by the terms of the licence.
- By clause 7.1.1, the licensee could simply terminate the licence at any time. This would not secure long-term management of the mitigation land.
- Termination could also be arranged under clause 7.1.2. Again, this would not secure long-term management.

Conclusion

Sensitive land will not be bound by planning obligations. This includes land at the appeal site; and land to the west of the Strawberry Line, which Mr Matthews does not wish to be bound by planning obligations.

The issues about ownership and lack of control of land reinforces the importance of appropriate and enforceable planning conditions. It is very doubtful, however, that Grampian conditions would work and be appropriate for **long-term management** of sensitive habitat - i.e. over a period of decades and well after development has commenced and the dwellings have been occupied.

The appeal should accordingly be refused.