

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Executive Member for Economy, Transport and Environment
<b>Date:</b>	9 September 2014
<b>Title:</b>	Knowle Village Bus Gate Adoption
<b>Reference:</b>	6035
<b>Report From:</b>	Director of Economy, Transport and Environment

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#### 1. Executive Summary

1.1. The purpose of this paper is to apprise the Executive Member for Economy, Transport, and Environment on work carried out to investigate the possibility of adopting the Knowle Village Bus Gate, to clarify the complications that have been encountered, and to propose an alternative course to pursue the management and maintenance of the bus gate through the existing Unilateral Undertaking submitted to the County Council by Berkeley Homes.

#### 2. Background

- 2.1. In 2003 a planning application was made by Berkeley Homes to Winchester City Council for Phase 4 of the development of land at the former Knowle Hospital site in Knowle Village. This application was approved subject to the satisfaction of the County Council over the provision and future maintenance of a bus gate.
- 2.2. The reason for the provision of the bus gate in the first instance was due to the inadequacy and the private nature of Mayles Lane. Access to the centre of Knowle Village was deemed important on sustainability grounds. It was considered that the use of the bus access between Knowle Village and Mayles Lane needed to be controlled in some way as Mayles Lane was not suitable for use by general traffic. It is not known what agreements exist, if any, between Berkeley Homes and the private party land owner to allow access through the bus gate, which could prevent the private party from withdrawing their permission should they chose to do so.
- 2.3. The bus gate that was installed has a control system of telescopic bollards that can be raised and lowered automatically by sensors on buses as they pass over them and is located at the entrance from Mayles Lane in The Square for bus use only. However, the County Council was not satisfied

with the future maintenance proposals of the bus gate. At that time there were no other bus gates in Hampshire and the County Council's legal advisors took a cautionary approach to the bus gate and needed to be satisfied that the future maintenance would be secured. Berkeley Homes had asked Hampshire County Council to adopt the bus gate but this course of action was not supported by the County due to concerns over future maintenance. Negotiations between the two parties were protracted and in 2005 Berkeley Homes submitted a new identical application in order to reach a suitable agreement. The result of this was an agreement that a Section 106 agreement would be entered into by Hampshire County Council and Berkeley Homes to secure the future maintenance of the bus gate.

- 2.4. It was the intention of Berkeley Homes to charge for the future maintenance of the bus gate, which would be met by the management company formed from the residents of the Knowle Hospital development. The management company would also be the successors in title to Berkeley Homes once the Section 106 agreement had been signed.
- 2.5. Since this agreement was signed, there has been a lot of disquiet and unhappiness expressed by residents who feel that they are paying twice for the bollard; once through Council Tax to Hampshire County Council for highways and transport provision and secondly through the Residents Management Charge at Knowle. A significant amount of petitioning of officers and Members has taken place by the Knowle Village Residents Association (KVRA) and local County Councillors in an attempt to get the County Council to adopt the bus gate. In addition the County Council has now adopted a number of other bus gates including one only a few miles away from Knowle in Yew Tree Drive, Whiteley, and Knowle residents can see little reason why the Knowle bus gate cannot now be adopted. It is however worth noting that the Yew Tree Drive bus gate is currently open to all traffic pending a decision on whether an application should be made to Fareham Borough Council for a permanent opening.
- 2.6. In December 2009 a proposal was put to Berkeley Homes by the County Council, which would see the bollard and surrounding on site infrastructure at Mayles Lane become adopted highway. The suggestion was that the County Council would carry out the bus bollard remedial works and contribute towards the future maintenance costs thereafter by use of the existing Section 106 monies, which are being held in respect of the Knowle development site.
- 2.7. In July 2010 Berkeley Homes confirmed that it was its intention to have the bollards and drive through adopted and confirmed its approval to use monies from the Section 106 fund; the Section 106 money was therefore set aside for this purpose.
- 2.8. County Council Engineers were commissioned to take the project forward. The works programme produced by Engineering Consultancy demonstrated that the project could potentially take until May 2014 to implement given the need for signs approval from the Department for Transport (DfT), which was

quoted as possibly taking 9 months. However, whilst DfT approval has now been being gained, Hampshire's legal team has been working on a land issue that came to light last year when it was identified that the land from Mayles Lane up to and including the bus bollard was owned by three separate landowners; Homes and Communities Agency (HCA), Berkeley Homes and the Thistlethwaite family.

- 2.9. Whilst the HCA and Berkeley Homes agreed to dedicate the required land, the private party landowners have declined to do so and are instead looking to pursue a licence agreement. They are happy for buses to continue to have access as they have had for some years, and would enter a licence to confirm the status quo, but were advised by their lawyers not to dedicate the land in question as that would mean they were giving up rights over the land to the Highway Authority, with the possibility that at some point in the future the bus gate could be opened up to all traffic; the private party landowners maintain that they have, in the past, given a commitment not to allow general vehicular access onto and from Mayles Lane.
- 2.10. The County Council has explained that in the light of the proposed capital investment and ongoing maintenance burden, there is no scope for a situation where the agreement for bus access could be terminated, however remote that possibility might be, and that Hampshire County Council needs assurances that cannot be achieved under a licence. However the private party landowners remain adamant a licence agreement is the only suitable way forward. Given the above, the project team does not feel able to recommend that the Council proceeds with a licence agreement as suggested by the private party landowner's solicitor, given that the investment that the County is to undertake in adopting the bollards (around £188,000) cannot be protected and the right of use of this land as public highway cannot be ensured.
- 2.11. In addition, Mayles Lane itself is not public highway and has recently transferred in ownership from the HCA to the Land Trust, save for a short section where the land joins the main road into Wickham. The rest of the lane is a private road owned by the Land Trust and the County Council understands it is gated once a year to show and maintain the status quo of no public rights being acquired. Therefore even if the bus gate were to be adopted and the Land Trust dedicated their land between the bus bollard and Mayles Lane, there is still the ongoing issue of Mayles Lane itself where bus services are running on land that is not public highway and where permission to do so could be withdrawn at any time (this issue is being dealt with separately through negotiations with, formerly, the HCA and now the Land Trust).

Knowle Village is adjacent to the Wellborne development, which the third party landowner also has an interest in and it is likely that the Wellborne development will have an impact on the public transport offerings in the area.

### 3. Finance

- 3.1. There is £188,000 of Section 106 contributions allocated to bring the bus gate up to an adoptable standard.
- 3.2. Annual maintenance costs associated with the adoption of the bollard are estimated to be in the region of £7,500.
- 3.3. To date detailed design of the scheme has not been carried out as work has only been carried out on the signing and land requirements. Initial indications are that the scheme will require all of the £188,000 funding.

### 4. Summary

- 4.1. In summary there are 5 areas of land involved in the use of the bus gate:

Knowle Avenue - highway maintainable at public expense;

Berkeley Homes land - Berkeley Homes is happy to dedicate its land for the County Council to adopt with the result that the Berkeley Homes land would become highway maintainable at public expense and available to the public in perpetuity. Its use would be regulated by a Traffic Regulation Order to stipulate buses only.

Private party land - The private party landowners do not want to dedicate but would licence its use by buses. No discussions have been held to date regarding keeping equipment on this land and any licence would need to cover rights of access etc. This would therefore make it private land publically maintainable under the licence, which would be an anomaly as far as the County Council is concerned.

HCA/Land Trust land – The HCA was happy to dedicate and for Hampshire County Council to adopt as per the Berkeley Homes land above. However this land is now in the ownership of the Land Trust, which has been approached regarding its views on dedicating the land to the County Council but to date no response has been received. However if the private party landowners do not dedicate then, in the normal course of events, the council would not want an isolated strip of highway land “sandwiched” between non-highway land.

Mayles Lane – Land Trust - No commitment to dedicate was received from HCA for use by buses. It referred last year to “formalising the arrangement” and then later when pressed this changed to “formally recognising the bus service” but it has not been possible to elicit anything else. Ownership of this land has now passed to the Land Trust and negotiations must begin again. Initial contact has been made but no formal response received to date.

## 5. Risks

- 5.1. However generously any licence might be worded it is ultimately always going to be revocable by its very nature; it is a permission which can be withdrawn. The private party landowners say that they are happy for the bus use to continue, wouldn't immediately withdraw permission as soon as a breach of the licence occurs, and will act reasonably and allow us to rectify. However, the worst case scenario is that the permission is withdrawn thereby making the bus gate redundant.
- 5.2. There is also the question of Mayles Lane, which is still unresolved and is another significant area of doubt. Not only had the HCA never indicated that it would dedicate or make permanent the arrangement for buses to use its lane, it has now passed ownership of Mayles Lane to the Land Trust. Discussions will therefore have to start again with the Land Trust regarding formalising the arrangement for the use of Mayles Lane by buses. If it withdraws or refuses permission for buses to use the lane the County Council would again be left with a redundant bus gate and stub of highway.

## 6. Options

- 6.1. There are 3 options available:

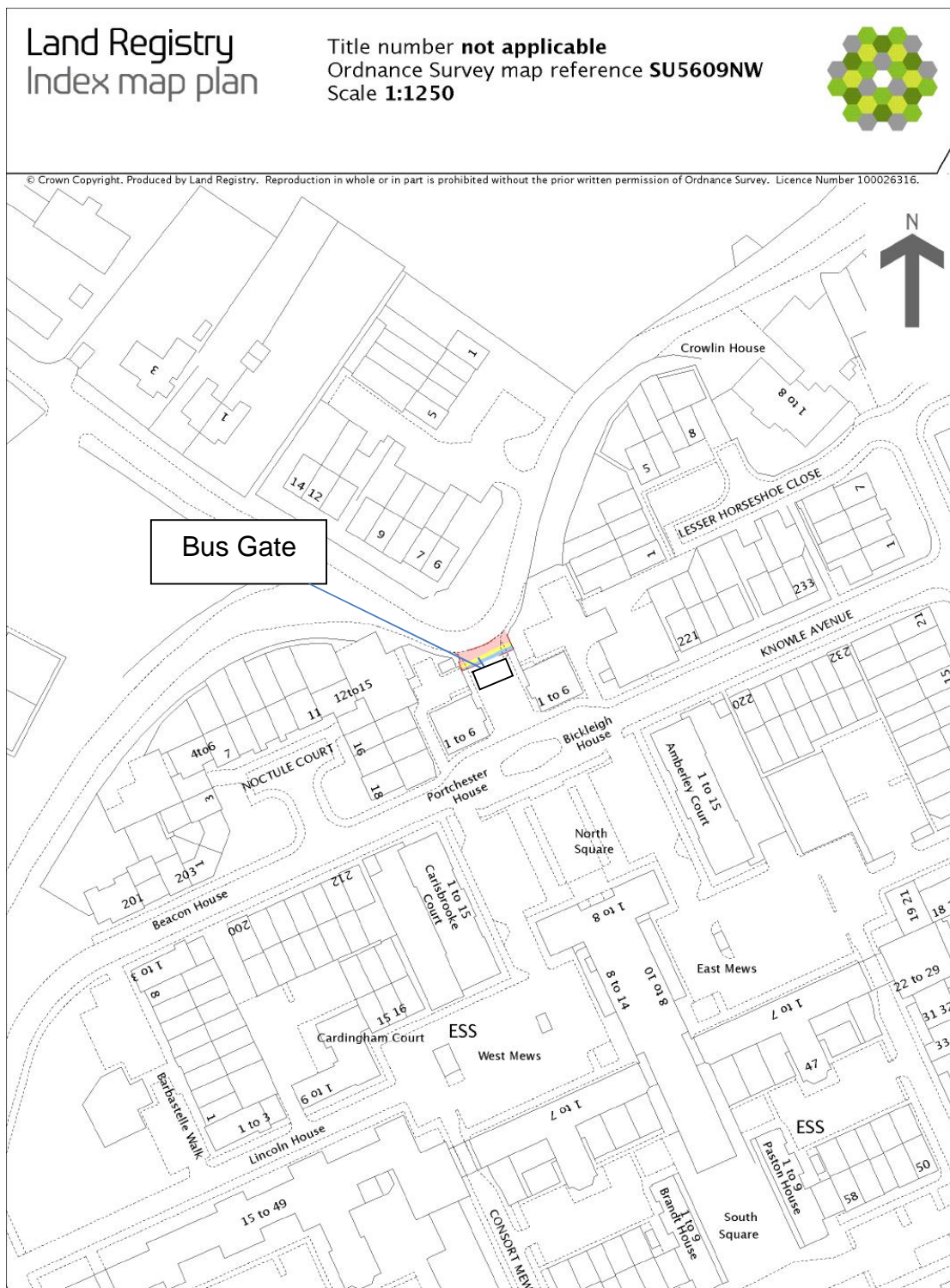
Pursue the option of land acquisition through Compulsory Purchase Order (CPO). The dedication of land from Berkeley Homes and the Land Trust could be pursued while looking to acquire the strip of land from the private party landowner through CPO. This option is not considered financially viable given that the benefits given to the County Council from acquiring the land are limited and Mayles Lane itself would still remain in private ownership.

Pursue the dedication of land from Berkeley Homes and the Land Trust and enter into a licence agreement with the private party landowner. This option has a significant capital outlay and ongoing maintenance cost associated with it together with the ownership of the risk. The County Council would end up being responsible for the maintenance of the bus gate and the land between The Avenue and Mayles Lane while the Thistlethwaite family could withdraw the rights of access at any time.

Do nothing and leave the maintenance and operation arrangements for the bus gate as set out in the Unilateral Undertaking. This option also runs the risk of the Thistlethwaite family withdrawing rights of access at any time. However with the current situation the responsibility for the operation and maintenance of the bus gate remains, together with the risk element associated with the ownership issues, with Berkeley Homes and the management company.

**7. Recommendation**

- 7.1. That the County Council proceeds no further in the proposed adoption of Knowle Village Bus Gate, leaving the operation and maintenance of the bus gate to Berkeley Homes and the Management Company under the terms of the Unilateral Undertaking, and that the bus gate adoption scheme be withdrawn from the County Council's 2014/2015 Capital Programme.



Plan prepared on 01/03/2013 at 00:00:01.  
 This Plan should be read in conjunction with result G82UTKB.  
 This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale.  
 Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 – Title Plans and Boundaries.

**Plan showing the area to the north of the bus gate as owned by three landowners –**  
**Blue = Berkeley Homes,**  
**Pink = Land Trust,**  
**Yellow = private third party**

Plan showing existing HCC adopted land within Knowle Village



**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

DocumentLocation

None

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;

Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

#### **Due regard in this context involves having due regard in particular to:**

The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;

Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;

Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

### **1.2. Equalities Impact Assessment:**

The bus gate is currently operational and maintenance and operation are carried out by a management company appointed by Berkeley Homes. Berkeley Homes has presented a Unilateral Undertaking to Hampshire County Council to maintain and operate the bus gate, so the decision for the County Council not to adopt the bus gate should have no effect on the existing situation. The bollards and bus gate will remain and continue to be operated and managed as they have been since they were implemented.

### **2. Impact on Crime and Disorder:**

2.1. None

### **3. Climate Change:**

3.1. No impact