

CENTRAL DUDLEY AREA COMMITTEE

08 FEBRUARY 2005

REPORT OF THE DIRECTOR OF LAW AND PROPERTY

APPLICATIONS IN RESPECT OF LAND AND PROPERTY OWNED BY THE COUNCIL

1. PURPOSE

- 1.1 To bring to the Committee's attention requests relating to land and property controlled by the Council and to seek the Committee's recommendations on those requests.

2. BACKGROUND

- 2.1 The Council has interests in a substantial amount of land and property across the Borough, those interests being controlled by the Council's various departments.
- 2.2 Requests are received from the public on a regular basis for property related matters such as purchases, leases, licences, easements and access agreements. Those requests are dealt with by the Directorate Law and Property who carry out a consultation process with the Council's relevant departments before preparing a report for Committee to consider.
- 2.3 Reports for this Committee are attached as appendices and the proposal resulting from the consultation on each particular request is set out at the end of each appendix. A plan is provided where required.

3. PROPOSAL

- 3.1 The proposal is set out at the end of each report in the appendices.

4. FINANCE

- 4.1 In general terms, easement and access agreements each generate a capital receipt for the Council. The sale of the land generates a capital receipt for the Council, the size of which would depend on a valuation placed on the site by the Director of Law and Property and the price finally agreed between the parties.

5. LAW

- 5.1 Section 123 of the Local Government Act, 1972 enables the Council to dispose of its interests in land at the best price reasonably obtainable.
- 5.2 Section 123(2A) of the Local Government Act, 1972 requires the Council prior to any disposal of open space to advertise notice of its intention to do so for two consecutive weeks in a newspaper circulating in the area in which the land is situate and to consider any objections which may be made.

- 5.3 The various statutory undertakers will have statutory powers to install equipment in Council owned land, but they do apply to the Council for a formal agreement, such as an easement, on a regular basis.
- 5.4 Section 32 and 34 of the Housing Act, 1985 and the General Consents for the disposal of Houses and Land, 1999, enable the Council to let and dispose of land and buildings held for housing purposes at the best price reasonably obtainable.
- 5.5 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 enables the Council to apply provision to any land it sells restricting its future use, provided the relevant section of the Act are specifically referred to in the transfer document and are registered as a local land charge.
- 5.6 Section 111 of the Local Government Act, 1972 empowers the Council to do anything calculated to facilitate or which is conducive to or incidental to the discharge of any of its functions.
6. EQUAL OPPORTUNITIES
 - 6.1 The proposals take into account the Council's equal opportunities policies.
7. RECOMMENDATION
 - 7.1 That the proposals contained in each of the attached appendices be approved.
8. BACKGROUND PAPERS
 - 8.1 See individual appendices.

John Poyce

DIRECTOR OF LAW AND PROPERTY

Contact Officers:

Gill Hudson, Property Manager, Ext. 5311
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CENTRAL DUDLEY AREA COMMITTEE

DATE: 8 FEBRUARY 2005

APPLICATION TO PURCHASE LAND

LOCATION: REAR OF 18 VAUXHALL GARDENS, DUDLEY

(As shown on the plan attached)

BACKGROUND

An application has been received from the owner of 19 Vauxhall Gardens, Dudley, a privately owned property, to purchase an area of Council owned land, as shown on the attached plan.

The land is controlled by Directorate of Housing and forms an area of land-locked land adjacent No. 1 Uplands Road, which is a sold Council house purchased under the right to buy.

The applicant wishes to purchase the land for a garden extension and wishes to lay a lawn and perhaps erect a gazebo on the land. The applicant states that the land will be maintained to a high standard if he is allowed to purchase it.

COMMENTS

The relevant Council Directorates have been consulted regarding the application and no objections to the disposal of the land have been received as it forms a landlocked area that has no beneficial use to the Council.

At the Council meeting on 19th July 2004 it was resolved to approve changes to the constitution in relation to how some land matters are handled. It was agreed that certain matters can be circulated to Ward Members instead of referral to Area Committee and if Members are in agreement, a decision sheet can be signed by the relevant lead member. If there are any objections or complications, the matter should then be referred to the appropriate Area Committee meeting for consideration. This case falls into one of the categories that could be dealt with in this manner, being approval to dispose of Housing Revenue Account land measuring under 200 square metres.

The Ward Members were therefore consulted and it was suggested that the land may be of interest to other adjacent properties for garden extension and the owners of 19.20 & 21 Vauxhall Gardens and the owner of 1 Uplands Road have therefore been contacted.

The owner of 1 Uplands Road opposes the disposal of the land as he is concerned that any changes to the structure of the land may undermine the property or put the new boundary fencing in jeopardy. The natural slope of the land is too great for building or gardening and has mature trees and shrubs that provide a natural windbreak and visual barrier. He also states that other local residents are also in opposition to the lands disposal.

The owner of 19 Vauxhall Gardens does not wish to purchase any of the land but requests that the land is tidied and a fence erected at the eastern end to prevent unauthorised access.

The owner of 20 Vauxhall Gardens has expressed an interest in purchasing the part of the land to the rear of their garden themselves.

The options are therefore to:

1. Refuse the application and retain the land in Council ownership
2. Declare the land surplus to requirements and offer the land to adjoining residents as appropriate.

PROPOSAL

That the Area Committee consider the contents of this report and make a recommendation to the Cabinet Member for Housing.

BACKGROUND PAPERS

1. Letter(s) from the applicant.
2. E-mails and memos from the Council Directorates.

Contact Officer: Gill Hudson, Property Manager, Ext. 5311

CENTRAL DUDLEY AREA COMMITTEE

DATE: 8 FEBRUARY 2005

APPLICATION FOR RELEASE OF RESTRICTIVE COVENANT

LOCATION: LAND ADJACENT TO 37 YEW TREE ROAD, NETHERTON

(As shown on the plan attached)

BACKGROUND

The Central Dudley Area Committee at its meeting on 4th November 2004 deferred consideration of this application so that a Member's site visit could be held.

A Member's site visit was arranged for the 23rd November 2004 and the result of the site visit was that the Area Committee be advised to recommended that the lead Member for Housing refuse the application to lift the restrictive covenant.

To reiterate, an application has been received from the owner of 37 Yew Tree Road, Netherton, a former Council house purchase under the right to buy, for the release of a covenants relating to the site in order to build a second property on the land.

Contained within the conveyance of the property are 2 covenants.

The first covenant states that the owner is not to erect on the said premises or any part thereof any other structure of any kind. The determination of this covenant is the subject of this report.

The second covenant states that the owner is not to make any structural alterations or additions to the premises without the prior written consent of the Council.

Both covenants are for the benefit of the Directorate of Housing.

The applicant is considering selling off part of the site for residential development to build a 3 or 4 bed roomed house and use the proceeds to fund improvements on their existing property. They have therefore requested that the covenants be lifted in order for them to progress their plans.

COMMENTS

The relevant Council Directorates have been consulted regarding the application.

The Directorate of Law and Property and The Development Control Section of the Directorate of the Urban Environment do not consider that the land is of sufficient size to support an extra dwelling and they therefore consider that the application should be refused, as it would not gain planning consent.

There were no further objections received.

The Legal Division of the Directorate of Law and Property state that the second covenant can be dealt with by Officer's delegated authority. When improvements or alterations are to be undertaken on a former Council house, the applicant should submit plans to the Conveyance section at 5 Ednam Road, who will then circulate the proposals to the Local District Housing Office and Ward Members for comments, before agreeing the alterations under delegated authority. A standard fee of £30 plus vat is charged. These consents are in addition to any other necessary consents required such as building regulations and planning permission etc.

PROPOSAL

That the Area Committee advise the Cabinet Member for Housing to refuse the application.

BACKGROUND PAPERS

1. Letter(s) from the applicant.
2. E-mails and memos from the Council Directorates.

Contact Officer: Gill Hudson, Property Manager, Ext. 5311

CENTRAL DUDLEY AREA COMMITTEE

DATE: 8 FEBRUARY 2005

APPLICATIONS TO PURCHASE AND FOR VEHICULAR ACCESS ACROSS LAND AT:

LOCATION: GADS GREEN, NETHERTON
(As shown on the plan attached)

BACKGROUND

Two applications have been received regarding land in the control of the Directorate of Housing at Gads Green, Netherton.

The access track is maintained by the Directorate of the Urban Environment and crosses land within the ownership of the Directorate of Housing. It is well used by all ages and is a definitive footpath (D69) that runs from Gads Green through to St. Georges Road, crossing the dismantled railway line.

The first application received is from the owner of land at 3 Gads Green, Netherton, who has gained planning consent to build a second property for his son on the old orchard adjacent to the existing house. This new property is to be known as 5 Gads Green.

By way of a Deed of Grant dated 18th January 1968 the Borough Council conveyed to the former owner of 3 Gads Green a right of vehicular access across Gads Green to the property. This right is granted to whoever owns the site of No. 3 Gads Green only and not the owner of the Orchard, so in order to secure vehicular access to the new property the applicant has applied for a right of way across the track known as Gads Green to the new property as shown on plan 1 attached.

The second application has been received from Solicitors acting on behalf of the owner of an area of land adjacent to 31 Gads Green which is to be developed for residential purposes.

The second applicant wishes to purchase an area of land which is hatched on the attached plan 2 which is controlled by the Directorate of Housing, in order to add it to the development site and has also asked for vehicular access rights across the track known as Gads Green through to St. Georges Road as shown on plan 2.

COMMENTS

The relevant Council Directorates have been consulted regarding both of these applications and it is considered that the sale of the area of land requested to be added to the development site, should be refused, as this land contains mature shrubs and trees and there is a difference in levels. It may also be required for the upgrading of the track to a vehicular standard. It should therefore be retained in Council ownership.

Objections to granting access to the second applicant for the whole length of Gads Green through to St. Georges Road have also been received as this is a well used public footpath and it should not be opened up to traffic as it would create a short-cut between St. Peter's Road and St. George's Road and would be detrimental to pedestrian safety.

The Directorate of the Urban Environment would therefore require that the part of the track serving the existing users and proposed users should be made up and upgraded to an adoptable standard of a 4.8m wide road, plus 1.6m for installation of lighting columns (0.8m either side) before it can be used for any additional vehicular traffic. The cost of this upgrading should be paid for by the residents who would gain benefit from the access. The reason for the upgrading is to reduce the pedestrian/vehicular conflict, to protect the safety of pedestrians using the track and to regularise the maintenance liability to the Council.

It is therefore proposed that an agreement under section 38 of the Highways Act 1980 and any other necessary acts be entered into and the necessary notices be served in order to secure the construction and adoption of the public right of way to an adoptable vehicular standard, as specified by the Director of the Urban Environment, and that pending the completion and adoption of the public right of way, the developers be granted a temporary licence to gain access to the site for construction purposes .

It is also recommended that the decision be made in consultation with the Lead Member for Transportation, as the track is currently an adopted pedestrian public right of way.

PROPOSAL

That the Area Committee recommend that the Cabinet Member for Housing, in consultation with the Cabinet Member for Transportation:

- 1) Refuse the sale of the land and the granting of access rights across the track.
- 2) That the Director of Law and Property and the Director of the Urban Environment be authorised to enter into an agreement under section 38 of the Highways Act 1980 (and/or such other agreements) and to serve any notices as shall be necessary to secure the construction and adoption of the public right of way as public Highway.
- 3) That pending the completion and adoption of the public right of way, the developers be granted a temporary licence to gain access to their sites for construction purposes, on terms and conditions to be negotiated and agreed.
- 4) That the Director of the Urban Environment advise the relevant parties of the work and costs involved in bringing the track up to an adoptable standard and take the necessary steps to adopt the track as a public vehicular highway once they are satisfied that the standard has been achieved.

BACKGROUND PAPERS

1. Letter(s) from the applicant.
2. E-mails and memos from the Council Directorates.

Contact Officer: Gill Hudson, Property Manager, Ext. 5311

CENTRAL DUDLEY AREA COMMITTEE

DATE: 8th FEBRUARY 2005

APPLICATION FOR A LICENCE TO OCCUPY COUNCIL OWNED LAND

LAND AT THE REAR OF 123 & 125 IVANHOE STREET, DUDLEY

(As shown on the plan attached)

BACKGROUND

A request has been received from owners of 123 & 125 Ivanhoe Street, Dudley to occupy the land to the rear of their properties. A report was submitted to the Area Committee at its meeting on the 4th November 2004 and a request was made for further information.

Originally, the curtilage to the houses along Ivanhoe Street only extended to a line that runs approximately half way along their present back gardens. To the rear of these properties is land that the Council had purchased in 1901 under the Burial Act 1900 for cemetery purposes. Part of the land to the south was later appropriated in 1955 to open space purposes under the Open Spaces Act 1906.

The land to the rear of Ivanhoe Street may only be used for recreational, burial ground or for any other municipal purposes. In 1952 the Estates Committee considered the sale of the area to the residents of the houses fronting 102 to 136 Ivanhoe Street. It was resolved to grant licences to the residents and it would appear that this practice has been continued since then. The land has never been used as a cemetery and is under the control of the Directorate of the Urban Environment.

Licences are only issued to the person named on the licence and have to be applied for by any new owners of the properties along 118 – 138 Ivanhoe Street. The licence cannot be transferred with the conveyance of the property. The previous owners of 123 & 125 Ivanhoe Street have had licences granted in order to allow them to use the land as part of their gardens and the new owners have now applied for a licence.

COMMENTS

All the relevant Council Directorates have been consulted regarding the applications and no objections have been received.

PROPOSAL

That the Area Committee advise the Cabinet Member for the Environment to approve the granting of a licence to occupy the land to the rear of 123 & 125 Ivanhoe Street to their respective owners. The licences are to be granted on terms and conditions to be negotiated and agreed by the Director of Law and Property.

BACKGROUND PAPERS

1. Letter(s) from the applicant.
2. E-mails and memos from the Council Directorates.

Contact Officer: Alan Nugent, Property Manager, Ext. 5351

CENTRAL DUDLEY AREA COMMITTEE

DATE: 8th FEBRUARY 2005

APPLICATION TO EXCHANGE COUNCIL OWNED LAND

LOCATION: LAND AT JESSONS C OF E PRIMARY SCHOOL, DUDLEY
(As shown on the plan attached)

BACKGROUND

The Director of Education & Lifelong Learning has requested a land exchange between Dudley MBC and the Trustee's of Jessons CE Primary School. The nursery unit on the site is LEA maintained and located on LEA controlled Land. The LEA is looking to provide a new Nursery unit in a new location, on land currently under the control of the Trustee's. The Directorate of Education & Lifelong Learning wish to exchange the land currently under LEA control for land currently under Trustee control.

The Dudley School Board originally bought the school site in 1895. The Council would have subsequently taken over responsibility and ownership from the Board. In 1987, the Council sold a major part of the site to the Trustees of Dudley Church of England School Foundation. The major parts of the site retained by the Council were the caretaker's house and the nursery school. The proposed new nursery land would be built on land owned at present by the Trustees. Then the former site of the nursery could be used by the Trustees to enlarge the playground. Full details and the exact location of the new nursery unit still have to be finalised.

COMMENTS

The relevant Council Directorates have been consulted and no objections have been received.

PROPOSAL

That the Area Committee advises the Cabinet Member for Lifelong Learning to approve the exchange of land between the Trustees of Jessons C of E Primary School and Dudley MBC. The exchange to be on terms and conditions negotiated and agreed by the Director of Law & Property.

BACKGROUND PAPERS

1. Letter(s) from the applicant.
2. E-mails and memos from the Council Directorates.

Contact Officer: Alan Nugent, Property Manager, Ext. 5351