

BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE

12 APRIL 2018

MEMBER'S ITEM: LAND DISPOSAL, CONSULTATION AND ACCESS

Report from: Perry Holmes, Chief Legal Officer

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Summary

This report sets out a response to an issue raised by Councillor Maple concerning the freehold disposal of land adjoining Union Place Car Park New Road, Chatham.

1. Budget and Policy Framework

- 1.1 Under Medway Constitution Overview and Scrutiny rules (Chapter 4, Part 5, Paragraph 9.1) Councillor Maple has requested that an item on this matter is included on the agenda for this meeting.
- 1.2 The sale of land is a matter for Cabinet with low value sales delegated to Officers.

2. The Issue

- 2.1. Councillor Maple has requested that an item be placed on the agenda and the reasons set out by Councillor Maple are as follows:

The Council's policy is that, where appropriate, land and property owned by the authority will be disposed of. In the light of the issues raised in a specific case in Chatham where the sale of small parcels of land resulted in a significant impact on surrounding communities, I would like to explore:

- *to what extent is the Council required to consult local stakeholders when disposing of land or property - both in terms of any statutory responsibilities to consult and also the Council's own policies and procedures, and;*
- *what best practice looks like.*

3. Director's comments

- 3.1 The Council owned three small areas of land to the rear of new Road (shown hatched and cross hatched black on the attached plan – Appendix 1).
- 3.2 The rectangular area of land between the Union Place Car Park and 195-203 New Road had been fenced off from the car park and was not actively maintained by Parking Services and had become unkempt. The Council's Tree Officer advised that the self-sown trees and vegetation on the land had no significant amenity value. Parking Services confirmed they did not require the land.
- 3.3 The other two parcels of land had originally been acquired by Kent County Council for a road scheme which was subsequently abandoned. The surface of the land was in poor condition and a frequent target for fly-tippers, drug users and unauthorised parking. Analysis of the Council's Deeds, Land Registry Certificates and past Ordnance Survey plans confirmed that some adjoining owners had rights of access over the land (where their respective properties abutted) but such formal rights did not exist for the benefit of the High Street properties or for the King's Theatre.
- 3.4 A wall originally separating the Council's car park from the cross hatched land had largely been removed at some indeterminate time to facilitate pedestrian access, although the width of opening was limited and there was an uneven step down from the car park side. Alternative pedestrian access from the car park to the High Street already existed, next door but one to Kings Theatre, and remains today.

Background to Disposal

- 3.5 In the autumn of 2015, an approach was received from the owner of 195/203 New Road to acquire the strip of Council owned land between that building and the car park. The building was to be converted from office to residential use under the relaxed Permitted Development provisions
- 3.6 This also created an opportunity to dispose of the Council's other two parcels of land, part of which afforded vehicular access to the rear of 195/203.
- 3.7 After a Land Registry search (a copy of the relevant information is attached as Appendix 2), all freehold landowners abutting the Council's land (as shown coloured and numbered on the plan at Appendix 1) were contacted by letter advising of the proposed sale and they were asked if they wished to make an offer to purchase all or part of the Council's holdings.
- 3.8 Separate meetings were held on-site with two landowners and an offer for part only of the land was subsequently received. Following a request for 'best and final offers' an offer from the owner of 195/203, for all of the Council's land, was accepted.
- 3.9 As the value of the land was under £100,000, then in accordance with the Constitution and the scheme of delegations, the sale was completed using the Chief Legal Officer's authority without the need to consult Members.

- 3.10 If land has a value of over £100,000 Cabinet approval is needed before it can be sold, whereas for pieces of land with a value of under £100,000 these can be disposed of by the Chief Legal Officer using his delegated powers. Where land has a holding department and is used then this holding department is consulted prior to disposal and they would usually consult their Portfolio Holder.
- 3.11 The Council is not required to consult local stakeholders when it disposes of non operational property. However when the Council disposes of property it is required under S. 123 of the Local Government Act 1972 to obtain best consideration. In this case it did that by offering the land for sale to adjoining owners.
- 3.12 It is Council policy as set out in the current Property Strategy 2017 to 2022 to generate £20M over 5 years from disposing of property and to have a portfolio that is:
- Fit for purpose, in the right location and sustainable.
 - Sustainable, safe and accessible.
 - Flexible, efficient and provides value for money.
 - Capable of providing revenue income.
- 3.13 Where properties do not meet these requirements (which the subject land did not) they are considered for disposal. The Property Strategy in December 2015, which was when the sale occurred included the following strategic aims:
- To only own that property we need to deliver the services we provide.
 - To sell those properties that are surplus to recover capital receipts
- 3.14 Guidance on ward work issued by the Councillor Conduct Committee in 2015 acknowledges that keeping abreast of issues affecting local residents is an ongoing issue for all Councillors during their term of office. The guidance says that Councillors can expect to be kept up to date by officers on all significant matters affecting their ward including (but not limited to) the following issues:
- Schools – including amalgamations, closures, academies, proposed new schools and important internal matters such as changes to staffing structures and the appointment of Deputy/Assistant Directors, Service Managers and other senior staff
 - Greenspaces – including large-scale clearances, new green space developments, improvements to parks, changes to grass cutting regime etc.
 - Parking – including changes to car parks, introduction of Controlled Parking Zones and on-street parking charges etc.
 - Road works – including introduction of yellow lines, road surface improvements, pavement improvements, road closures and roadworks (excluding smaller scale works like pot holes for example)
 - Transport – including changes to bus routes, introduction/changes of speed limits, improvements or changes to railway stations/tracks/bridges/ and any transport consultations

- Public events and official visits in the ward – including festivals, fun runs, ceremonial openings, community events etc.
- Service reconfigurations – including proposals to discontinue, close or restrict any facility such as post offices, youth clubs, council offices, libraries, services for older people etc.
- Ward Improvement schemes – including introduction of new recycling facilities, alleyways, health centres etc

3.15 In this case ward councillors were not consulted as the size and value of the land being disposed of was relatively small. Therefore this was not considered to be a significant issue which required consultation with local Members.

Agreed Disposal Terms

3.16 The sale was agreed subject to:

- a) any rights that may exist across the land,
- b) the purchaser maintaining all boundaries,
- c) the right for the council to connect into any utilities on, over or under the land to be sold,
- d) reservation of rights of light and support for the benefit of the council's retained land, and
- e) pedestrian access rights for the council, in common with others, over the cross hatched land (but not implemented on completion).

Events Subsequent To Disposal

3.17 The purchaser erected a metal post on the cross hatched land the intention was to stop vehicles passing, but not pedestrians. This resulted in a complaint from the theatre tenant (Spotlights) that access directly from the public car park for props and wheelchair users was no longer possible.

3.18 The purchaser removed the existing chain link fencing on the car park boundary. in order to replace this with a more substantial steel palisade fence. The area between the car park and the cross hatched area of land was temporarily left open, with an uneven sloping surface, and a member of the public claimed against the Council after allegedly sustaining an injury from falling over on this surface.

3.19 Parking Services then closed off the opening as a consequence of the potential claim and the purchaser has now erected a fence between the western end of the cross hatched land and the Council's retained car park.

3.20 On 29 March 2018, concerned local freeholders and leaseholders met with Councillors Maple, Tejan (local Members) and Councillor Gulvin (Property Portfolio Holder). The Chief Legal Officer explained the process the Council had followed, which is outlined above. He confirmed that letters had been sent to adjoining freeholders. The Christian Spiritualist Church which houses the First Time Nursery complained that they had not received a letter from the Council. The Spotlights Theatre also did and confirmed the same for the Confucius Chinese Restaurant.

- 3.21 As can be seen from Appendix 2 it is clear that the Church is not an adjoining owner and was therefore not consulted. However letters were sent to the freeholder for the Theatre building and the Chinese Restaurant. Whilst there is no need in law to consult, it is reasonable to assume that freeholders who had concerns about the proposed sale could have contacted the Council and or their leaseholders.
- 3.22 At the meeting it was asked whether the Council could use its compulsory purchase powers to re-acquire the land. The Chief Legal Officer said that he could not see that being possible as the Council had no use for the land and no scheme linked to it.
- 3.23 The Church, Nursery and the local Theatre also asserted that there was a public pedestrian right of way across the land and into the Council's Union Street car park. They said they had attempted to engage with the Council's Public Rights of Way Team. The Chief Legal Officer confirmed that the sale was subject to any existing rights. If a right of way can be established, this could lead to the removal of any barriers that may have been erected on such a route.
- 3.24 The Chief Legal Officer undertook to confirm details of those owners who were consulted prior to the sale (Appendix 2); to speak with the Public Rights of Way Team (that discussion is on-going) and also to explore a possible rear access to the Spotlights Theatre (discussions are on-going on this also).

Future Disposal Process

- 3.25 It is seldom possible to identify all occupiers of adjoining properties (particularly tenants) so they can be informed of a proposed disposal. It would be for each freehold owner to inform any tenants/licencees and freeholders would be the parties most concerned with protecting any rights attaching to their legal interests.
- 3.26 In terms of best practice in this area, Government guidance requires the Council to obtain best consideration from the disposal of surplus property. The Government has not issued any specific guidance to local authorities in respect of consultation with neighbours when disposing of land.
- 3.27 It would not be particularly practical to consult local Members on all low value sales of land. In this case, it is not clear that to have done so would have highlighted the possible issues that have emerged. Given the way the delegation is set up, Officers ought to be free to make land disposals in order to bring much needed capital receipts into the Council. There are of course specific service situations where appropriate consultation with local members does take place.

4 Risk Management

- 4.1 There are no specific risk implications for Medway Council arising directly from this report.

5. Financial and Legal Implications

5.1 The sale of the three parcels of land completed on 22 December 2015 and the Council obtained a capital receipt of £35,000.

5.2 The legal implications are set out in the body of the report.

6. Recommendation

6.1 It is recommended that the Committee notes and comments on the Member's item.

Lead contact

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Appendices

Appendix 1 – Site Plan

Appendix 2 – List of freeholders notified

Background Papers

None.