



BUSINESS SUPPORT OVERVIEW & SCRUTINY COMMITTEE

23 AUGUST 2018

PUBLIC RIGHTS OF WAY CLAIM – NEW ROAD, CHATHAM

Report from: Assistant Director Physical and Cultural Regeneration
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Summary

This report sets out the current status of the public rights of way (PROW) claim in respect of land adjoining Union Place Car Park, to the rear of 195-203 New Road, Chatham on the attached plan.

It also outlines a suggestion that has been put forward for an alternative, private access agreement, as well as clarifying any planning consent requirement for the fences and gates that were erected by the new owner after the sale of the land.

1. Budget and Policy Framework

- 1.1 At the meeting of the Committee held on 12 April 2018 Members considered a Member's Item concerning the freehold disposal of land adjoining Union Place Car Park New Road, Chatham. The Committee requested an update on the status of the PROW claim, in respect of the above land and also asked officers to investigate whether the large fences and gates erected by the new owner required planning permission
- 1.2 Medway Council is the Surveying Authority for the Medway area and is responsible for producing Definitive Maps and Statements of Public Rights of Way and for keeping them up to date. Under The Wildlife and Countryside Act 1981, Medway Council is under an obligation to keep the Maps and Statements under continuous review.

2. Background / the issue

- 2.1 The sale of some small parcels of Council owned land in New Road Chatham as indicated in the plan, and the resulting fencing and gates erected by the new landowner has prompted a claim to be made by The Kings Theatre company that a public right of way exists from the High Street, running across

its land shaded and marked 338 High Street and the edge of the newly sold parcel of land (shown as cross hatched on the plan at Appendix 1), to the Union Place car park.

- 2.2 A completed claim has been received along with 20 user evidence forms requesting that the definitive map and statement are reviewed to show this route as a public right of way.

3. Options available to the Council

- 3.1 The claim can continue to be processed to ascertain the probability of a PROW having been acquired.
- 3.2 The matter of access can be agreed independently between all parties involved and the claim withdrawn by the applicant.
- 3.3 A suggestion has been made to facilitate an independent agreement which would involve the Council granting the theatre a right of way across the Union Place car park. This would involve the loss of two parking spaces.
- 3.4 This suggestion will only be of benefit to Kings Theatre and their patrons and will not offer access for users of the Kut O Chinese Association and Confucius restaurant. Officers will endeavour to negotiate with the new landowner to establish if an access agreement can be reached independently, that benefits all parties.

4. Current status and analysis of the claim

- 4.1 The history of access on this route is currently being investigated, within the highway setting. This will be followed by interviews with the landowner, affected parties and users that have completed evidence forms.
- 4.2 After all investigations are complete, a report will be written and a decision made on the status of the access, based on legislation and evidence given.
- 4.3 The process is a lengthy one. Any decision that is made is then open to objection, possibly leading to referral to the Planning Inspectorate and a potential public Inquiry.
- 4.4 Initial investigations from a PROW perspective indicate that this is a dispute for rights of access/easement to the landowners' places of business. Many of the users notate access to the Theatre as reasons for use of the route.
- 4.5 The nature of use for a public right of way must be by the 'public at large' rather than customers and employees of particular businesses.
- 4.6 There is a public right of way less than 30 metres to the east of this route running from New Road to the High Street (called Market place) and an access path less than 20 metres to the west, accessing the High Street from the car park.

5. Financial, Legal and Risk implications

- 5.1 A successful right of way claim may affect land values for all parties, as the route crosses 4 different areas of ownership.
- 5.2 An unsuccessful claim can be challenged by the applicant and consequently facilitation and legal costs can be incurred by the Council if the matter is not resolved and has to be referred to the Planning Inspectorate.
- 5.3 The option that allows an independent access agreement as outlined in paragraph 3.3 above carries a financial cost of £2158pa in loss of income from the 2 parking spaces. The affected business could be requested to pay this annual cost in exchange for an access agreement.
- 5.4 The decision on PROW status of the route will not be available in an immediate timeframe. It is anticipated that the decision will be at least six to nine months distant due to the lengthy process and workload of the officers.
- 5.5 It is clear that there is public upset over the closure of what was used as an access to the theatre and a restaurant; however as set out in paragraph 4.6 above there are alternatives.
- 5.6 A private agreement with the new landowner will negate any potential legal costs that may result from the claim decision.
- 5.7 An unsuccessful right of way claim for the applicant will mean that the access problem remains unresolved. However if Medway Council works in partnership to resolve the access issue and benefit Medway residents who use the access, it will, in turn, show commitment to the 'Core priorities and ways of working'.

6. Planning Status for fencing already erected

- 6.1 The palisade fencing that has been erected between 195-203 New Road and the Council car park requires planning permission as it exceeds 2m in height, the same fencing has also been used to the rear of 205 -217New Road, although looking at its condition it may have been in situ for some time. There is also a black gate adjoining the land to the rear of 195-203 New Road that would also require permission as would the gate directly opposite.
- 6.2 Unless the owner applies for and obtains planning consent for the gates and fences, the council as planning authority can take enforcement action. It should be noted that the owner could replace the fences and gates with items that are under 2 metres in height and that if it did this, planning consent would not be required, however this would not resolve the access issue.

7. Recommendation

- 7.1 The Committee is asked to note this report.

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Appendices:

Appendix 1 - Site plan

Appendix 2 - Freeholders abutting the land sold by the Council

Background Papers:

None