

Cabinet

11 June 2024

Easement for use of Medway Council Land at Jeffery Street Car Park, Gillingham

Portfolio Holder: Councillor Naushabah Khan, Portfolio Holder for Housing and Property

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Summary

This report requests that Cabinet agrees to delegate authority to negotiate and issue a perpetual easement for access across and over its land by the adjoining site owner at 21 Jeffery Street.

1. Recommendations

- 1.1. It is recommended that Cabinet agrees to delegate authority to the Director of Place, in consultation with the Portfolio Holder for Housing and Property, to grant an easement on the best terms reasonably obtainable at a premium, as set out in the Exempt Appendix.

2. Suggested reasons for decision

- 2.1. To regulate use and obligations of the parties in the land transaction and obtaining best consideration for the proposed transaction. Also, to assist in securing development of the adjoining site which will provide residential Private Rented Sector (PRS) units.

3. Budget and policy framework

- 3.1. The value of the proposed easement premium is in excess of £20,000 and therefore is beyond officer and Director delegated limits contained in the Employee Delegation Scheme. Cabinet is therefore asked to authorise the proposed property transaction.

4. Background

- 4.1. Medway Council are the freehold owners of the pay and display car park site located in Jeffery St, Gillingham.
- 4.2. The adjoining site, 21 Jeffery St, was a former public house which secured planning consent for redevelopment in 2018. The consent (MC/22/0935 as amended by planning application MC/23/2051) was for demolition of the existing building and construction of a 4-storey building comprising 24 flats and 2 commercial units at ground floor level. The site is privately owned and was purchased by the current owners in February 2022. Works started on site July 2022 and it is anticipated that development will complete December 2024. The owners intend to rent the flats privately from January 2025.
- 4.3. The developer's scheme fully occupies the development site but 12 of the flats propose to have balconies which oversail the Council's land to the westerly and southern boundaries. In addition, the two ground floor commercial units require a rear pedestrian access, all of which would be reliant on the Council granting such rights to use its land, by way of easement. The proposals would not interrupt the pay and display car park or the number of car parking spaces available. A further 12 balconies oversail the public highway, to the north and easterly boundaries of the development site, and the Highway department have granted a licence for this arrangement under S.177 of the Highways Act 1980. This land is not in the ownership of Medway Council.
- 4.4. The extent of Council land affected by the proposed easement measures 75 sqm and comprises a level block paved pathway around the car park.
- 4.5. The attached exempt appendix contains commercially sensitive information on the easement premium and party.

5. Options

- 5.1. Option 1 – Authorise officers to grant an easement to the adjoining owner at a premium in excess of the officer delegated threshold of £20,000. This option would have a positive budgetary impact. **This is the recommended option.**
- 5.2. Option 2 – Refuse to grant an easement to the adjoining owner. This option would result in loss of income and may prejudice the deliverability of the scheme.

6. Advice and analysis

- 6.1. The proposal will not impact the Council's current use of the pay and display car park but it may impact future alternative uses since the 75sqm of land will be sterilised by the balconies and accessways. The value of the premium reflects the optimum value of the impacted land.
- 6.2. If the Council were to refuse to grant the easement the adjoining owner would have to either cease the development altogether or significantly alter their scheme which may prejudice timing and delivery.

6.3. The Council has the power to dispose of property (including the granting of easements) under s123 of the Local Government Act 1972. However, the Council has a duty to obtain best consideration, which the proposed transaction will do.

7. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Developer proceeds without Council's consent	Greater risk to developer as Council could bring an action for the tort.	Cabinet authorises the transaction and receives a premium for the easement.	CIII

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

8. Consultation

8.1. The relevant service department and the Portfolio Holder for Housing and Property have been consulted and have no objections to the grant of an easement.

9. Climate change implications

9.1. The subject in question is for a land transaction with no climate implication.

10. Financial implications

10.1. The easement value has been calculated and discussed, in principle, with the developer. The exact premium has not been detailed in this report as it is considered commercially sensitive information but is contained in the Exempt Appendix. The level is however above the delegated limit of £20,000 and therefore requires the Cabinet to agree to delegate the premium level to be applied to officers.

10.2. Granting the easement would result in the Council generating a capital receipt from the property. The easement premium would be a one off receipt to Medway Council and would not affect the use of the pay and display car park spaces and therefore, revenue income received from the car park. Therefore, any decision to grant an easement does not cause financial pressure for the Council.

11. Legal implications

- 11.1. The Council has a duty under Section 123 of the Local Government Act 1972, to obtain best consideration when it disposes of or grants leases for over seven years or more of land and property, which is applicable to the proposed transaction.
- 11.2. As the premium level proposed exceeds the limit established in the employee scheme of delegation, Cabinet approval is required before the easement can be entered into.

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Appendices

Appendix A: Plan of Jeffery St car park with the Council's land coloured pink.
Exempt Appendix: Exempt information on proposed easement.

Background papers

None