

CABINET MEMBER FOR HOUSING, LEISURE, LIBRARIES AND FLOODING – CLLR JONATHON SEED

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REFERENCE: HL-02-16

TO RELEASE A COVENANT ON A PRIVATE DRIVE IN BARN HILL, CHILMARK

Purpose of Report

1. To seek approval to release a covenant on a private drive in Barn Hill, Chilmark.

Reason for Decision

2. To manage the current neighbour and land access dispute between Dr and Mrs Kinnison and the Council and our tenants

Consultation

3. The Local Unitary Member has been consulted.
4. During the notice of intention to make a decision period, two emails were received. In response to a query on how the action would assist the council, it was explained releasing the covenant would improve the situation for the local residents. The Local Unitary Member also confirmed they supported the action.

Options Considered

5. The Council have considered the installation of Electric storage heaters at 3 properties. It is estimated this would cost in the region of £21,000

Main Considerations for the Council

6. The Council owns 6 bungalows in Barn Hill, Chilmark. There is a further bungalow purchased under the Right to Buy regulations. These bungalows are accessed by a footpath and there is an unadopted private drive adjacent to the footpath. Attached as appendix (A) is a plan of the location of the bungalows, the footpath and the private drive.

The private drive is owned by Dr and Mrs Kinnison (the owners). The Council and our tenants have pursuant to a 1963 conveyance a right to drive up and down the private drive but no right to stop on the private drive.

Since at least 2008 there have regularly been difficulties arising between the owners of the unadopted private drive and the Council's tenants regarding access rights. After seeking clarity from the deeds associated with the private drive it has been confirmed the Council and our tenants only have access rights to drive up and down the private drive and no rights to stop.

The Council's housing service has tried to ensure our tenants understand the access limitations for the private drive but there are regular occurrences when vans delivering goods for our tenants or contractors of the Council block the private drive by stopping

on the private drive. These incidents, due to the historical nature and poor relationship between the landowners and previous tenants, have meant that at times the conflict over access has on occasions become adversarial which is not in either the owners or the tenants' best interests.

The owners have agreed that by prior arrangement for oil deliveries can be made by accessing the private drive but it has now reached a situation where the landowners are advising this arrangement will be withdrawn for the Council tenants.

This lack of access to the private drive will directly affect 3 tenants who live at the top end of the private drive. The Housing team has made enquiries and has established as an alternative that the Council can install an oil fill point cabinet to the rear of the Council properties on Council owned land which would allow oil companies to make deliveries without the need to access the private drive.

The owners have a separate agreement with the occupier of 2 Barn Hill who has purchased the bungalow and with the owners who lie on the other side of the private drive.

The owners have therefore requested that the council relinquishes its rights to the private drive which they feel will remove any further opportunities for disputes between them and Council tenants.

It is considered that due to the ongoing difficulties and potential conflicts over access, relinquishment will also be in the tenants' best interests.

Background

7. When the properties at Barn Hill were built vehicular usage was not as popular as today and the likelihood of any dispute occurring could not be envisaged.

There are 7 properties of which 6 are owned by the Council.

The bungalows are generally occupied by elderly or disabled people.

All tenants have availability for car parking at the bottom of the private drive, as outlined in appendix (A) and the private drive is not needed to access this parking.

Some of the tenants are vulnerable due to age/disability. The Council has a duty of care to support these tenants. If an existing tenant feels the proposed change to the private drive access arrangements will affect them detrimentally the Council will consider them for a housing management transfer to another more suitable property. This will only apply to existing tenants and will be offered as a one off arrangement for consideration within the first 6 months of any change to the access arrangements. Any new tenants will be provided a full understanding of these access arrangements at the start of their tenancy.

Overview and Scrutiny Engagement

8. This has been discussed with the local member.

Procurement Implications

9. The Council will need to follow the existing procurements arrangements for the purchasing and installation of an oil fill point cabinet that will cost in the region of £10,000.

Safeguarding Implications

10. This proposal is to minimise disputes between neighbours arising out of the conflict that has been occurring between users of the private drive and therefore there are no adverse safeguarding/public health implications and equalities impact have been considered later in this report.

Public Health Implications

11. This proposal is to minimise disputes between neighbours arising out of the conflict that has been occurring between users of the private drive and therefore there are no adverse safeguarding/public health implications and equalities impact have been considered later in this report.

Environmental and Climate Change Considerations

12. This proposal is for the surrender of the use of right of way whereby the tenants had the right to pass and repass but no right to stop and does not provide any access other than for deliveries agreed by the owners. Therefore there are minimal Environmental or climate change considerations and if anything it is likely to have a minimally positive effect as it will reduce vehicle movements on the private drive.

Equalities Impact of the Proposal

13. Some of the tenants are vulnerable due to age/disability. The Council has a duty of care to support these tenants. If an existing tenant feels the proposed change to the private drive access arrangements will affect them detrimentally the Council will consider them for a housing management transfer to another more suitable property. This will only apply to existing tenants and will be offered as a one off arrangement for consideration within the first 6 months of any change to the access arrangements. Any new tenants will be provided a full understanding of these access arrangements at the start of their tenancy.

This proposal is a proportionate response to remove any potential conflicts that the tenants may face or cause.

Risk Assessment

14. **(1) Risks that may arise if the proposed decision and related work is not taken**

Our tenants will not be able to access oil deliveries and the Council will need to consider installing an alternative and potentially more expensive heating and water system for our tenants.

The current dispute between the private drive owners and our tenants will continue which will involve significant officer time to manage and provide no quality of life for both parties.

(2) Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

The Housing Service will need to ensure all existing and new tenants understand that there are no access rights to the private drive. As part of a tenancy introduction for future vacancies at Barn Hill this will be included.

The private drive owners have agreed to install fencing to help mitigate against the misuse of their private drive.

Financial Implications

15. The cost of installing an oil fill point cabinet at Barn Hill will be in the region of £10,000. The private drive owners have offered to contribute £3,000 towards this installation as a goodwill gesture in return for the Council agreeing to relinquish all rights to the private drive.

The private drive owners have agreed to meet their legal costs associated with the change on the covenant on the private drive and install fencing.

This expenditure is within the ring fenced Housing Revenue Account (HRA). Any extra spend will need to be found from compensating savings within the HRA budgets.

Legal Implications

16. The surrender of the private right of way is a relatively simple legal transaction. The implications and reasons for the surrender are set out in the body of this report.

The surrender of the private right of way is considered to be best value due to the contribution offered by the owners and the balance financial value being offset by the social benefits the removal of potential conflict would bring to the community including the Council's tenants.

List of appendices

Appendix A - Layout of Barn Hill, Chilmark

Decision Made

I approve the release of a covenant on a private drive in Barn Hill, Chilmark for the reasons as set out in the report.

This decision was published on 17 October 2016 and will come into force on 25 October 2016.

Date: 17 October 2016

.....Signed.....

Cllr Jonathon Seed

APPENDIX A - Layout of Barn Hill, Chilmark

