

DECISION ITEM



REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES	TOURISM AND LEISURE COMMITTEE	7 JANUARY 2016	4

GRANT OF EASEMENT OVER LAND ADJACENT TO 37 WOOD STREET, ST ANNES

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

As part of the regeneration scheme carried out in Wood Street in 2002, the forecourt and driveway leading to the garage at the rear of the café at 37 Wood Street was developed as an outside seating area. As a result, vehicular access to the garage can only be obtained by passing over a section of driveway belonging to the council and the owner of 35 Wood Street, who is now refusing to allow access across his land.

In order to create a legally useable access to the garage it will be necessary to reduce the size of the seating area slightly and grant an easement giving the owner of 37 Wood Street a right of access over Council land. All works will be carried out at the owner's cost and to a specification agreed with the council. This report recommends that the council approves the grant of the easement.

RECOMMENDATIONS

1. That the council agrees to the sale of an easement of access over land at Wood Street, St. Anne's at a nominal price of £1.

CORPORATE PRIORITIES

To Promote the Enhancement of The Natural & Built Environment (Place)		To Encourage Cohesive Communities (People)	
To Promote a Thriving Economy (Prosperity)	√	To Meet Expectations of our Customers (Performance)	√

SUMMARY OF PREVIOUS DECISIONS

Grant given to the owner of the premises under the Heritage Environment Restoration Scheme an initiative between The Borough Council, English Heritage and private building owners.

Background

1. Wood Street in St. Anne's has been the subject of extensive regeneration schemes from the year 2000 until 2012. This has taken place in distinct phases. The principles included within the schemes have been of enhancing shop fronts and private forecourts to create coordinated parking, landscaped and outside seating areas. Historically, the council owned some of the forecourt areas whilst others were (and remain) privately owned. However, the improvement scheme overall has included significant areas of forecourt irrespective of ownership in order to achieve a comprehensive scheme which has benefited the street environment as a whole.
2. The council already owned the forecourt of 37 Wood Street which prior to the scheme was used partly for parking and partly as a driveway serving a garage at the rear. The ground floor is used as a café and as part of the regeneration scheme the whole of the forecourt and driveway was developed as an attractive flagstone seating area including a section of brick wall and landscaping. This provided an economic benefit to the café as well as contributing to the vibrant Wood Street café culture which the scheme was designed to create.

The Access Problem

3. The development of the forecourt removed the driveway to the rear garage but at the time this was not considered a problem because the garage was little used and could in practice be accessed across the driveway serving 35 Wood Street. It was intended that a formal right of access would be granted, but this did not take place. This driveway is mainly owned by the council apart from a small section which is held with 35 Wood Street.
4. The owner of 35 Wood Street has recently refused permission to pass over his land and as a result the garage at the rear of 37 Wood Street is now inaccessible. This creates operational difficulties and it will hinder any sale of the property to have a garage with no access.

The proposed solution

5. A solution to this problem can be achieved by:
 - a) Giving consent to remove part of the wall, landscaping and seating area, and
 - b) Granting an easement of access over land owned by the Council including the area released as a result of a)
6. As the walled enclosure represents a major element of the forecourt improvement, it is important that it is rebuilt in a satisfactory manner. The owner of 37 Wood Street has agreed to reconstruct the wall, landscaping and seating area, to the satisfaction of the council, in a new location outside the area required for garage access.
7. The attached plan shows hatched in black the area over which the easement will be required.

The Valuation

8. The valuation attached to this report states that the easement to be granted has a nominal fair value in the open market. However, the definition of fair value excludes any special value to a particular purchaser and in this case there is a special value to the owner of 37 Wood Street who will be unable to access the garage unless the easement is granted. It is not considered appropriate to exploit this special value as it was always intended that access to the garage would be maintained and the fact that an easement has not yet been granted is simply an omission. In practice the owner of 35 Wood Street would have been unlikely to support the scheme if it resulted in the loss of access to the garage.

Legal and Policy Considerations

9. The grant of an easement is subject to the council's Land Transaction Procedure Rules which are included in the constitution as Part 4c. These require the sale of property assets such as this to be exposed to the general market unless there are special circumstances. In this case the owner of 37 Wood Street is considered to be a 'special purchaser' which constitutes special circumstances for the purpose of the procedure rules.
10. Except with the consent of the Secretary of State, the council cannot dispose of land for "a consideration less than the best that can reasonably be obtained".
11. Specific consent is not required for the disposal of any interest in land which the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. In the opinion of the council's Principal Estates Surveyor the nil consideration in this transaction is less than the best price reasonably obtainable as the council could seek a payment from the owner of 37 Wood Street for the right to obtain access to the garage. In this case it is considered that the grant of the easement will help Fylde BC secure the promotion or improvement of the economic, social or environmental well-being of its area. This is because the purpose of the scheme was to improve the environment of Wood Street and the economic well-being of its retailers. In particular, the special value for this access was only created because the cooperative approach of landowners which enabled the regeneration scheme to proceed. Therefore, the specific consent of the Secretary of State is not required.

Recommendation

12. That the council agrees to the grant of an easement of access over land at Wood Street, St. Anne's at a nominal price of £1.

IMPLICATIONS	
Finance	There are no significant financial implications and any additional costs will be contained within the existing approved revenue budgets
Legal	The legal implications are set out in paragraphs 9 to 11 of the report
Community Safety	No implications
Human Rights and Equalities	No implications
Sustainability and Environmental Impact	The recommendation will assist the sustainability of the business at 37 Wood Street with no significant adverse environmental impact
Health & Safety and Risk Management	No implications

LEAD AUTHOR	TEL	DATE	DOC ID
Gary Sams, Principal Estates Surveyor	01253 658462	26 October 2015	

LIST OF BACKGROUND PAPERS		
None		

Attached documents

1. Valuation report
2. Plan showing the land to be the subject of the easement hatched black