

BRECKLAND DISTRICT COUNCIL

Report of: Paul Hewett – Executive Member for Contracts & Assets

To: Cabinet – 13 January 2019

Author: Fiona Culshaw – Land Management Officer

Subject: Easement Valuation at Council owned land at Lynn Road, Swaffham

Purpose: To consider granting an Easement and to agree the consideration payable to the Council

Recommendation(s):

1. That, subject to the usual advertising requirements, an easement be granted in over the Council's land at Lynn Road, Swaffham in favour of the applicant.
2. That Cabinet determines whether to require payment at the full value (£24,000) assessed by the District Valuer or whether to accept the applicant's offer of £12,000.
3. That authority to finalise the terms and conditions of the easement and to complete the same be delegated to Executive Director Commercialisation in consultation with the Executive Member for Contracts and Assets.

1.0 BACKGROUND

- 1.1 An application has been received for an Easement for drainage under Council owned land at Lynn Road, Swaffham. The drainage easement is needed to serve a new development of 9 dwellings on the site at Stanfield House, Lynn Road, Swaffham, under planning application 3PL/2017/0314/F. The Council's land at this location is designated open space pursuant to a S106 Agreement. Any disposal of interest that is agreed to be provided, including an easement, would be subject to the normal advertising requirements affecting a designated open space.
- 1.2 The valuation for the Easement fee is £24,000 and was provided by the District Valuer.
- 1.3 The applicant states that the valuation is high in comparison to an alternative Easement route which avoids Breckland Council land. However this is not comparable to the Easement route requested from Breckland Council over its land. This alternative route would be more disruptive as it would involve running the drainage pipe along the adopted highway into Highfields Avenue and around the first foul manhole in the adopted highway. This would cause major disruption to all residents of Highfields Avenue as the road is narrow at that point whilst the drainage works are undertaken.
- 1.4 The applicant has in the past supported the Council in providing storage space for construction by the Council, providing space for parking of vehicles and the provision of a pathway across the applicant's land adjacent to the Council's HQ – Elizabeth House without a formal right of way. The applicant has asked for these to be taken into consideration. Officers recognise that these factors have a financial value to the Council although Officers are unable to confirm the quantum of this value. If it is decided that the quantum of value for the facts/reasons provided is equal to or in excess of the shortfall (£12,000) then the Council is not disposing of this interest at an undervalue and the

following legal advice at 5.1 would not need to be applied. If it is decided that the quantum of value for the facts/reasons provided is less than the shortfall then the legal advice at 5.1 should be applied.

- 1.5 The scheme for which the proposed easement relates will provide 9 new dwellings in Swaffham including 2 2-bed social rented bungalows.
- 1.6 The applicant has rejected the Council's valuation for the easement and has proposed a lower fee of £12,000, which they are willing to pay.

2.0 **OPTIONS**

- 2.1 **Option 1:** Agree to grant an easement at a fee of £12,000.
- 2.2 **Option 2:** Refuse to grant an easement at the reduced fee of £12,000 and maintain the requirement for a fee of £24,000.

3.0 **REASONS FOR RECOMMENDATION(S)**

- 3.1. In considering the Options members should consider initially whether there is an undervalue as outlined in 1.4. If there is no undervalue because the facts/reasons given in 1.4 can be justified to meet the shortfall then the Council is not disposing of this interest at an undervalue. If the fact/reasons do not meet the shortfall in value then the legal advice at 5.1 should be applied. The Council can under its constitution and adopted policy give an interest in land below valuation – however under the General Disposal Consent 2003 (see 5.1.) it is for the Council to determine whether the undervalue provides an appropriate '*promotion or improvement of the economic, social or environmental well-being of its area*'. The legal advice at 5.1 confirms this is not the case for this application. Members should also consider 5.4.1 regarding setting a precedent in the future for other disputes on value.

4.0 **EXPECTED BENEFITS**

- 4.1 The expected benefits for granting an easement, regardless of the financial value, are:
 - a. Income from the Easement fee for provision of an interest in land.
 - b. Support the development of 9 new homes.

5.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Constitution & Legal**

- 5.1.1 Legal advice has been sought to reaffirm that legally the Council can dispose of an interest below the market value and secondly what the considerations are under the

relevant act for justifying disposal of an interest below value. The legal advice is as follows:

Section 123 of the Local Government Act 1972 allows district councils to dispose of land (which includes the ability to grant easements) in any manner they wish, however such a disposal must normally be for the best consideration reasonably obtainable. This would normally be the open market value.

Secretary of State consent is required for any disposal which is at an undervalue. Secretary of State consent has been granted by virtue of the General Disposal Consent 2003. This Disposal Consent gives district councils consent to dispose of land (and to grant easements over its land) at less than best consideration where the council considers that it will help to secure **the promotion or improvement of the economic, social or environmental well-being of its area**. Any under value must not exceed £2,000,000.

The legal advice states that the reasons for undervalue for this transaction as outlined in this report does not meet the terms of General Disposal Consent 2003 as outlined above i.e. that the disposal of this interest undervalue does not secure the promotion or improvement of the economic, social or environmental well-being if the area.

Government guidance provides that the authority should ensure that it complies with normal and prudent commercial practices in deciding whether to dispose at an undervaluation, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.

Government guidance also requires the authority to consider state aid when considering an undervalue disposal. State aid has been considered by officers who consider that, due to the de minimis nature of the undervaluation amount does not constitute state aid.

5.1.2 Corporate Asset Management Strategy: The Council's Disposal Protocol in its adopted Corporate Asset Management Strategy states that 'The Council will seek to ensure best value for all disposals' and 'disposals will be at the best price available in the open market or ensuring appropriate agreed community returns'. This is always subject to the act and the Council's constitution.

5.1.1 Constitution: The disposal of an interest in land below a valuer's option is an executive function delegated to Cabinet committee. It cannot be delegated to a Cabinet member as the delegation to a Cabinet member for the disposal of an interest in land includes the provision that this should not be less advantageous than a qualified valuer's valuation. In light of the fact that the applicant has provided reasons to reduce to the Easement fee this report is presented to Cabinet committee to confirm the decision of the Council.

5.2 Corporate Priorities

5.2.2 The decision in this report supports the following Corporate Priorities:
Your Place
Our Council

5.3 Financial

5.3.1 The Valuer has reviewed the applicant's offer at £12,000. The Valuer considers this offer is too low and maintains the valuation is £24,000. The Valuer has estimated the value of the completed development at £965,000 based on comparable evidence to property sales that

this scheme will provide. The Valuer has also taken into consideration other Easement/Wayleaves applications in the area deducing that 2.5% is the comparable percentage that is required as an Easement fee. The assumption from the valuation is therefore that the completed scheme value can afford the Easement fee at £24,000.

5.4 **Reputation**

5.4.1 In considering this decision members should consider that if a below market value disposal of the interest is agreed it is highly likely to set a precedent for future Easements and Wayleaves applications in that the Council could leave itself open to further appeals against the fees charged. In a majority of cases the applicant accepts the fee required by the Council as this is based on an independent valuation and there are little other additional or mitigating factors to consider.

5.5 **Stakeholders / Consultation / Timescales**

5.5.1 Ward Representatives have been consulted.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 Swaffham

7.0 **ACRONYMS**

7.1 n/a

Lead Contact Officer

Name and Post: Fiona Culshaw
Telephone Number: 01362 656293
Email: Fiona.culshaw@breckland.gov.uk

Key Decision: No

Exempt Decision: No

This report refers to a Discretionary Service