

Committee: Cabinet

Agenda Item

Date: 17 September 2014

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Title: Saffron Walden Pig Market Charity,
Fairycroft Road Car Park

Portfolio Holder: Cllr Barker and Cllr Chambers

Key decision: **No**

Summary

1. The District Council is the Trustee of the Saffron Walden Pig Market Charity which owns part of the Fairycroft Road Car Park, the other part being owned by the Council in its local authority capacity. A neighbouring property has a legal right of way granted by Deed of Grant which originates from 1971. The route of the original right of way has been obstructed since the car park was built in 1987 and they have therefore been using a revised access route.
2. The owners of the neighbouring property have asked the Charity to enter into the appropriate documentation to reflect the actual route of the right of way. The Council in their role as Trustee need to consider how they should deal with this request in the best interests of the Charity.

Recommendations

3. The Trustees agree to grant a new right of way to owners of 23A Hill Street, on the basis that the existing right granted in 1971 is extinguished.

Financial Implications

4. The cost of officer time in dealing with the documentation only.

Background Papers

5. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Charity Commission Scheme dated 29 August 1980

Impact

- 6.

Communication/Consultation	None
Community Safety	None
Equalities	None

Health and Safety	None
Human Rights/Legal Implications	The Trustees need to act independently from the Council and in the best interests of the Charity, and those interests will not necessarily be the same as those of the Council. The Charity's only asset is the car park land, and it is from that the Charity derives income that it can apply to its charitable purposes.
Sustainability	None
Ward-specific impacts	Saffron Walden Audley
Workforce/Workplace	Legal staff

Situation

7. The Council is the sole trustee of the Saffron Walden Pig Market charity. The Charity owns part of the Faircroft Road car park (a share equivalent to 66/303). The purpose and administration of the charity is set out in a Scheme approved by the Charity Commission in 1980 which states that the land has to be used as a car park for the benefit of the inhabitants of Saffron Walden and the public and that any income should be applied for any charitable purposes for the general benefit of the inhabitants of Saffron Walden.
8. The land that the Charity currently owns was previously owned by the District Council, but in order to facilitate the Faircroft Road car park development and the new Waitrose, the land that the Charity owned was swapped for the land that the Council owned. The land that the Charity now owns is subject to a right of way by virtue of a Deed of Grant entered into in 1971 with the Council for the benefit of 23A Hill Street.
9. However since the redevelopment of the layout of the car park in 1987, the Owners of 23A Hill Street have used a different route to access their property as their existing route is essentially blocked. They have registered a caution against the registration of the Council's title at the Land Registry so that the new right of way will be investigated by the Land Registry when the Charity comes to register the land unless agreement is reached by the parties beforehand. The Owners have also done a statutory declaration to the effect that they have continuously exercised the right over the new route for a period of 20 years.
10. Despite appearing to be a straight forward administrative exercise to enter into amending documentation, in terms of charitable law, this is considered as a land disposal because it is a grant of a legal right of way. Charity Commission guidance has been sought and they advise that the Trustees need to decide

whether it is in the Charity's best interests to enter into the documentation to vary the right of way.

11. A surveyor's report was obtained when this issue was first raised, as it is a requirement of the Charities Act 2011 that Trustees have sought professional advice to establish what the effect on the value of the land would be by the proposed transaction. The key point of that report is that there is already a right of way over the property which should have always been provided so the granting of the new route and the removal of the old route has no effect on the value of the land. The Surveyor's report is attached to this report. The attached plans show the respective routes and the current layout of car park. If the Trustees do not agree to grant the new route, the old route should be reinstated.
12. In addition, the Owner could make a claim to the Land Registry under the Prescriptions Act 1832 for the new route to be legally established provided the Owners can show the use of the route has been as of right without interruption for the previous 20 years the Council has no grounds of objection to such a claim. They have already made statutory declarations to this effect and it is obvious from the way the car park is laid out that the owners could not have been using the original route to access their property since the time the car park laid out in the current arrangement.
13. This route would then be registered against the Charity's land as would the original route and they would then be legally entitled to use both routes. The Charity's land would then be encumbered by two legal rights of way which the Charity would be bound to observe. This would make it difficult to alter the current layout. Equally, the current redevelopment proposals for the car park are based on the current route that is in use.
14. The Trustees need to consider whether they accept the proposal to agree the new route and extinguish the old route by co-operating with the Owners as in the best interests of the Charity. It is necessary to resolve this issue now, so that the Caution against first registration can be dealt with, enabling the title to the land to be registered at the Land Registry, to facilitate the transactions with Waitrose as part of the redevelopment of the car park.

Risk Analysis

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Risk	Likelihood	Impact	Mitigating actions
Transaction does not comply with Charity Commission rules	1- Advice has been sought and is being followed	3 – The Council as trustees would be in breach of their duties	Charity Commission advice has already been sought, and copies of the surveyor's report provided, and Trustees are acting in

			accordance with their advice
No action is taken resulting in a formal legal claim being made	2 – On-going discussions with the adjacent land owner have resulted in the proposed course of action.	3 – Costs may be incurred in dealing with the claim and the land could be left encumbered with two accesses which could affect redevelopment	Co-operate with the property owners

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.