

Committee:	Cabinet	Date:	Thursday, 13 June 2019
Title:	Land and road at Parkers in Berden		
Portfolio Holder:	Councillor Petrina Lees, Portfolio Holder for Housing; Health and Wellbeing		
Report Author:	Roz Millership, Assistant Director - Housing, Health and Communities rmillership@uttlesford.gov.uk	Key decision:	No

Summary

1. This report seeks Members' approval for the amendment of a restrictive covenant in respect of a recreation ground at the rear of Parkers in Berden that was imposed when the land was transferred to the Parish Council, and for the acquisition of the access road to the Council owned properties at Parkers.

Recommendations

2. That Cabinet approves:
 - a. To vary the restrictive covenant to remove the reference to a croquet pitch or bowling green requirement so that the Parish Council can use the grounds for any recreational activity of their choice without first seeking the Council's approval
 - b. The acquisition of the access road at Parkers, Berden for £1 so that the Council is placed in the position it had intended when the recreation ground was sold to the Parish Council in 1997
 - c. To pay the Parish Council's legal/valuation costs which will be capped at £1,500 including VAT

Financial Implications

3. If the Council acquires the road at the nominal value of £1 there is no large financial outlay in respect of the purchase and it would enable the Council to take control of the road which provides the only vehicular access to the properties.
4. The financial implications will relate to the maintenance responsibilities for the repair and upkeep of the road but the adjoining owners at Parkers are liable to contribute toward the cost of this and in any future transfers of the remaining properties, the owners will also be liable to contribute towards the cost.

5. The Parish Council will require their legal/valuation costs to be paid up to £1,500 including VAT.
6. The Council has already assumed maintenance liabilities for the road as it has continued to carry out maintenance and repairs.

Background Papers

7. 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.
 - Plan showing the access road edged red
 - Correspondence from Berden Parish Council
 - Official Copies showing current ownership
 - A copy of the transfer of 4 July 1997

Impact

8.

Communication/Consultation	Berden Parish Council
Community Safety	N/A
Equalities	N/A
Health and Safety	N/A
Human Rights/Legal Implications	A Transfer will need to be completed for the transfer of the land to the Council The Council is under a statutory duty under Section 123 Local Government Act 1972 to obtain best value in respect of disposals of land.
Sustainability	N/A
Ward-specific impacts	Berden
Workforce/Workplace	Legal

Situation

9. In 1997 the Council transferred an area of land to the rear of Parkers in Berden to the Parish Council for £3,000. The value was based on the then current open market value of the land for its use as a recreation ground and the transfer included a covenant restricting its use.
10. The Council has a duty under Section 123 of the Local Government Act 1972 to obtain best value for any disposal of land and therefore the restrictive covenant was included to reflect the consideration paid at the time of the transfer to the Parish Council and to ensure that the land was used for recreation purposes in the future.

Restrictive Covenant

11. The Council have been approached by Berden Parish Council requesting an amendment of the restrictive covenant in respect of the use of the recreation

ground that was included in the 1997 transfer. The terms of the covenant are as follows:

(a) Not to use the land hereby conveyed other than for the purposes of a croquet pitch and bowling green or for such other recreational purposes as the District Council may approve in writing (such approval not to be unreasonably withheld or delayed)

(b) not to erect any buildings or other structures on the land hereby conveyed other than a shed or other similar building which shall not be used other than for the storage of play equipment and/or grounds maintenance equipment or machinery ancillary to the uses set out in sub-paragraph (a) of this Clause”.

12. The Parish Council have requested that the restrictive covenant be amended as follows:

(a) Not to use the land hereby conveyed other than for recreational, social and ecological purposes

(b) not to erect any buildings or other structures on the land hereby conveyed other than a shed or other similar building which shall not be used other than for the storage of play equipment and/or grounds maintenance equipment or machinery ancillary to the uses set out in sub-paragraph (a) of this Clause”

13. The amendment removes the reference to a croquet pitch or bowling green requirement so that the Parish Council can use the ground for any recreational activity of their choice without first seeking the Council’s approval.

14. It should be noted that the amendment of the covenant will not enhance the value of the land and will ensure that the land is continued to be used for recreation purposes as intended.

Access to Parkers

15. The Council have also been approached by Berden Parish Council in respect of ownership of the road that provides the vehicular access to the council houses at Berden. The road is shown outlined in red on the attached plan.

16. It would appear that when the Council transferred the recreation ground to Berden Parish Council in 1997, the adjoining road to Parkers was inadvertently included in the transfer.

17. It is believed that this was not the intention of the Council, as the road provides the only access to the houses at Parkers, and no right of way for the benefit of those houses was expressly retained in the transfer.

18. As it stands the Council do not own the land that provides the only vehicular access to its council houses at Parkers.

19. Berden Parish Council initially contacted the Council as there was concern over future maintenance liabilities for the road, as the road is within their legal title.
20. Correspondence on the original legal file from 1996 shows the road was not included in the original proposal. However, the plan referred to in the 1997 transfer included the road and the Land Registry will not deal with this as a rectification as no error has been made by the Land Registry. If the parties agree that the road was included in the transfer in error, the Land Registry will require a formal transfer of the land back to the Council.
21. Berden Parish Council has agreed to formally transfer the road back to the Council for £1.00 but have requested to retain ownership of the hedge at the end of Parkers.
22. The Council is under no obligation to take a transfer of the road back although to do so will put the Council in the position it had intended when transferring the recreation ground to the Parish Council.
23. It is proposed for the Council to take transfer of the road at a nominal sum (£1) and relieve the Parish Council of any maintenance responsibilities for the road and services.
24. The Council has in fact continued to maintain the road since the 1997 transfer.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
The Council do not own the access road to its properties and currently exercise rights that are not formally documented. The lack of ownership or formal rights of way could affect the future use / sale of the properties	1. The Council could claim a prescriptive right of way as rights of way have been exercised for at least 20 years, and an implied right to maintain the road or there may be a case for a claim for an easement of necessity if the properties cannot be accessed without using	2. It will make the sale of the properties harder to deal with, along with issues of maintenance and other users	Agree to the transfer of the road to the Council

	the road		
--	----------	--	--

- 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.