



## CABINET – 22ND JANUARY 2014

**SUBJECT: LAND FRONTING KING EDWARD AVENUE, CAERPHILLY**

**REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND S151 OFFICER**

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### **1. PURPOSE OF REPORT**

- 1.1 To seek Cabinet's view on the disposal of land fronting King Edward Avenue to adjoining owners.

### **2. SUMMARY**

- 2.1 In 2001, following an approach from residents of King Edward Avenue, who wished to purchase their frontages to create off-street parking areas, a decision was taken (under delegated powers) to sell the Council's retained land at the location to adjoining residents. That decision resulted in a dispute between neighbours, involving both the Police and the Ombudsman. In August 2002, following consultation with officers, local members and the (then) Leader of Council, the (then) Monitoring Officer recommended to the Chief Property Officer that that no further land be sold and the Chief Property Officer approved this action under his delegated powers. The majority of the residents in numbers 7 – 16 are now interested in acquiring their frontages, although one remains totally opposed.

### **3. LINKS TO STRATEGY**

- 3.1 Under its approved Asset Management Objectives, the Authority aims to manage its land and buildings effectively, efficiently, economically, and provide a safe, sustainable and accessible living and working environment for all users.
- 3.2 The Authority has a medium term financial plan (MTFP), which includes cost saving targets resulting from the disposal of assets.

### **4. THE REPORT**

- 4.1 The attached plan shows, edged red, a strip of land fronting numbers 7-12 and 14-15 King Edward Avenue. This strip of land incorporates a communal footpath (which serves all the properties and over which each resident has individual access rights), a grass verge and a hedgerow. When the majority of the adjoining properties were sold under the Right to Buy, this strip of land was excluded from the sales. However, there has been some inconsistency in that the land fronting numbers 13 and 16 was included in the sales of those properties under the Right to Buy.
- 4.2 In 2001, following an approach from residents, the then Chief Property Officer, following the disposal procedure, used Delegated Powers to approve the principle of selling the council's remaining land to adjoining owners. This resulted in major disputes between neighbours, with objections to the removal of the hedgerow, and the loss of existing access rights. No

compromise could be reached and in 2002, based on the recommendation of the (then) Monitoring Officer, the Chief Property Officer, under his delegated powers, agreed that, in order to avoid further disputes, no further land would be sold. The owners of numbers 11 and 12 were granted licences to formalise their existing parking use; other residents claimed to have acquired prescriptive access rights over these areas but have not sought to formalise the arrangement.

- 4.3 Over the years, there have been repeated requests to review the decision. In view of this, the residents of numbers 7-16 have been contacted to establish:-
  - 4.3.1 Would they now be interested in purchasing, or
  - 4.3.2 Would they have any objections to further sales?
- 4.4 Of those consulted, all but two (one property is vacant and one is on the market) have responded and of those, only one objects to the disposal of the frontages: he wishes the hedgerow to be retained; he does not want the land to be used for off street parking; he feels that there is sufficient parking on the highway. Officers are aware that, if the proposal is approved, some will wish to construct driveways that will necessitate the removal of further parts of the hedgerow. Highways officers have advised that the grass verge between the hedge and the road is part of the adopted highway, and several dropped kerbs already exist.
- 4.5 There is no operational requirement for the land and officers have no objection to its disposal. The main area of concern raised by officers (as well as local members and one of the residents) is the change that the disposal of the land (and potential creation of driveways) would have on the amenity of the surrounding area and the possible loss of all/parts of the hedgerow. The Council's ecologists have assessed the hedgerow and whilst they have no objection to the sale of the land, they advise that, if the hedgerow is removed, dense shrubs should be planted in the front gardens as a replacement. No removal of the hedgerows should be taken in the bird-nesting season. No highway issues have been raised either to the disposal or the creation of driveways.
- 4.6 Any disposals will be subject to existing access rights – it will not be possible to extinguish these rights unless all residents are prepared to surrender the same and this will be difficult to achieve.
- 4.7 Ward members have been consulted on the proposal, and they have concerns that selling individual parcels might give rise to further neighbour disputes; should residents then choose to fence their boundaries they will obstruct the communal footpath referred to in paragraph 0 above, notwithstanding the 3rd party rights to use that footpath. If the council retains an interest in any part of the land it will be drawn into resolving those neighbour disputes.
- 4.8 There are three options available to Cabinet.
- 4.9 To maintain the status quo and refuse to lease or sell any further land, in line with the views of the ward members. This option will disappoint those residents who wish to acquire their frontages.
- 4.10 To sell the freehold interest in its remaining land to adjoining residents, subject to any existing access rights. Whilst restrictive covenants could be imposed in the sales (to control matters such as the retention of the hedgerow and the need to maintain unrestricted access over the communal footpath) officers feel that the inclusion of covenants will be problematic; they will involve the Council in future action if there is a breach and they may not be enforceable, especially if the Council does not have any retained land.
- 4.11 To grant leases to adjoining residents, subject to any existing access rights. Granting leases, rather than selling the freehold interest, would better address ward members concerns referred to in paragraph 0 above, as well as concerns over the potential removal of the hedgerows. This option will also allow the Council to retain a greater degree of control over the future use of the land. For example, a covenant could be imposed in the lease allowing

the purchaser to remove only part of the hedgerow, sufficient to create a single driveway. This option would also allow residents to choose between paying a premium for the lease ("buying" the land) and paying an annual rent. This would alleviate the need to find a capital sum that might preclude a resident from taking up the opportunity in the current financial climate.

- 4.12 If Cabinet approves option 2 or 3, it is requested to delegate the decision regarding the terms of sale or lease, including the term of the individual leases to the Head of Performance and Property.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 An Equalities Impact Assessment (EqIA) screening has been completed in accordance with the Council's Equalities Consultation and Monitoring Guidance and no potential for unlawful discrimination and/or low level or minor negative impact have been identified, therefore a full EqIA has not been carried out.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 The disposal of the land will produce a minor capital receipt and/or revenue stream and relieve the Council of its maintenance obligations.

## **7. PERSONNEL IMPLICATIONS**

- 7.1 There are none.

## **8. CONSULTATIONS**

- 8.1 Ward members have been consulted on the proposal and, as noted at 0 above, they do have concerns that selling individual parcels might give rise to further neighbour disputes, if residents then choose to fence their boundaries thereby obstructing the communal footpath referred to in paragraph 0 above.
- 8.2 There are no other views expressed during the consultation that have not been incorporated into the report.

## **9. RECOMMENDATIONS**

- 9.1 Cabinet is asked to consider the options set out at 4.8 in the report and to make a decision on whether to approve:
- 9.1.1 Option 1: To refuse to sell or lease any further land at this location;
  - 9.1.2 Option 2a: To sell the freehold interest in the remaining land to adjoining residents, subject to relevant covenants  
Option 2b: To sell the freehold interest in the remaining land to adjoining residents, free from covenants;
  - 9.1.3 Option 3: To grant leases to adjoining residents;
  - 9.1.4 If the resolution is to approve Option 2 or 3, to delegate the decision regarding the detailed terms of the sales or leases to the Head of Performance and Property.

## **10. REASONS FOR THE RECOMMENDATIONS**

- 10.1 Option 1 is the preferred option of ward members on the basis that they have concerns that selling individual parcels might give rise to further neighbour disputes, whilst in respect of options 2 and 3:
- 10.1.1 The majority of the residents wish to acquire their respective frontages;
  - 10.2.1 The Council has no operational requirement for the land;
  - 10.1.3 The disposal of the land will release the Council from ongoing maintenance obligations.
- 10.2 This will enable the Head of Performance and Property to decide the most appropriate terms for any disposals without the need to present a further report to Cabinet.

## **11. STATUTORY POWER**

- 11.1 This is a Cabinet function.

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