

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Housing Portfolio Holder

20 March 2013

AUTHOR/S: Director of Housing

TRANSFER OF TRACK AT WALLER'S CLOSE, GREAT CHISHILL

Purpose

1. To seek agreement by the Housing Portfolio Holder for the transfer of land at Waller's Close, Great Chishill, as outlined red on plan.

Recommendations

2. That the Housing Portfolio Holder agrees that the freehold of the track at the end of Waller's Close, Great Chishill be transferred at nil cost to the owner of the rabbit sanctuary land at the rear, subject to specified conditions (Option Two).

Reasons for Recommendations

3. The track at the end of Waller's Close forms part of the only vehicular access to the rabbit sanctuary from Hall Lane. The sanctuary land is privately owned together with a further length of access track that extends westwards from the Council's track.
4. By transferring the track to the owner of the rabbit sanctuary, all future maintenance will become his responsibility.
5. The track is surplus to Council requirements.
6. The track is not a community asset as it serves private land only so there would be no local benefit in transferring it to the Parish Council. The Council's interests and the future use of the sanctuary land can be sufficiently protected with the conditions of transfer together with the covenant included in the 1988 conveyance of the remainder of the track.

Background

7. Waller's Close is adopted as public highway apart from the garage forecourt and the track at the end, which are in Council ownership.
8. The rabbit sanctuary land was once the site of sewage works, transferred by the Council to Anglian Water in 1979, who then sold the land, with right of access over Waller's Close and the track when the works became redundant.
9. The owner of the rabbit sanctuary land has a right of vehicular access over the Council's part of the track and garage forecourt in Waller's Close. The Council's part of the track forms about half of the full length of the track leading to the rabbit sanctuary.
10. Vehicular use of the track is by employees of and visitors to the rabbit sanctuary only. Waller's Close is the only link to the rabbit sanctuary from Hall Lane. Nos 3 – 7 Waller's Close use the track to access their properties by foot only.

11. The Council is legally responsible for maintaining the track and necessary repairs to the surface were recently carried out at the price of £5,716.60.
12. At the meeting on 23rd January 2013, the Housing Portfolio Holder agreed the following:
 - i) To transfer the freehold of the track at the end of Waller's Close, Great Chishill at Nil cost to the owner of the rabbit sanctuary land at the rear, following repairs paid for by South Cambridgeshire District Council to the track surface, the transfer to include a covenant restricting the use of the track to serve the rabbit sanctuary only.
 - ii) That, should the track be used in future for commercial or housing development on private land rather than solely for charitable purposes, the owner must apply to South Cambridgeshire District Council for release of the restrictive covenant. If this is agreed, it will be subject to the owner paying to the Council any increase in the value of the access from Waller's Close.
13. The matter is now subject to reconsideration following a request by Great Chishill Parish Council that the track be transferred to them.
14. If a formal offer is made to him, the owner of the rabbit sanctuary land has agreed to accept transfer of the freehold of the track at nil cost subject to the specified conditions and thus to take on full responsibility for its future maintenance.

Considerations

15. The track is not in the category of a 'ransom strip' as if ownership is transferred, Council owned land would remain between the track and the public highway. It is thus likely to be of little value.
16. It is in the Council's long term interest to dispose of the land.
17. The Parish Council's reasons for requesting ownership of the track are as follows (quote from Parish Chair):
 - i) "We have doubts as to the long term viability of the rabbit sanctuary. There have been questions as to the financial wealth of the project, and it is very dependent upon the continuing enthusiasm of the founder and manager, [CC]. Whilst the operation is run as a charity, the land on which it sits on is owned by [Mr C]. In the event that the sanctuary was closed, and in the context of Localism and possible changes on-going in planning guidelines, the Parish Council would like some control in the event that an application for alternative use was made.
 - ii) Whilst the Parish Council is generally supportive of the charities objectives, there have been a number of problems; visitor/staff parking, rubbish burning, and light intrusions causing irritation to the residents of Wallers Close. For this reason the Parish Council objected to permanent planning permission. SCDC recognised this and granted time limited permission. Whilst problems have diminished recently, the transfer to the Parish Council would provide increased leverage in the event of future problems."

18. Following a meeting with officers, the owner of the rabbit sanctuary land made a submission to the Council giving his own reasons why the track should be transferred to him. A summary of his submission is as follows:
- i) Has rented and then owned the land where the sanctuary is for 20 years and has no interest in owning the access road other than to allow the Rabbit Residence Charity to continue with their charity work to rescue and re-home unwanted pet rabbits. Restrictions imposed by the planning consent are adhered to.
 - ii) Have never had nor has any intention to consider the land to be used in any other way than the above, in the near or distant future.
 - iii) Communications with the Council (as owner of the track) started following submission of a claim for damage caused to cars using the access road. Council officers accepted that the track was in need of repair. They asked if he would be interested in taking ownership of the track following repairs and thus responsibility for future maintenance, since the Council had no use for the road.
 - iv) Agreed to drop car damage claim if ownership of the road passed to him.
 - v) At meeting with officers on 18th February, discussed interest in road received by SCDC from Great Chishill Parish Council. The Parish Council have no meaningful use for the road as it leads only to his land. The preferred owner of the road should be himself on behalf of those who use it, have a vested interest in its future maintenance and who will appease the Waller's Close residents' considerations.
 - vi) The fears of the Parish Council regarding future change of use of his land are unfounded.
19. It should be noted that with regard to 18 iv), it has been explained to the owner of rabbit sanctuary land that his insurance claim is a totally separate issue from the transfer of ownership of the track and will not in any way influence the decision whether or not to transfer ownership to him.
20. The length of track in private ownership that extends westwards from the Council's track was sold by the Council in 1988 subject to a covenant as follows: "not to use the land hereby conveyed for any purpose except for the purposes of access to and in connection with the use of the Purchaser's adjoining land as agricultural land and not to use the land hereby conveyed for the purpose of changing the use of the Purchaser's adjoining land from agricultural land".
21. A similar covenant can be included in the transfer to ensure that the track serves the existing use of the land as a rabbit sanctuary or for agricultural use only. Alternatively or in addition, a claw-back clause can be included to protect the Council's interests.
22. The above covenants are regarded as sufficient to protect the Council's future interests together with the future use of the sanctuary land.
23. The track is not a community asset as it serves private land only so there would be no local benefit in transferring it to the Parish Council. In addition, the Parish Council

would be taking on financial obligations by becoming responsible for its maintenance. The Parish Council would always be consulted with any future planning applications.

Options

24. Option One – Retain track in SCDC ownership
25. Option Two – Transfer the freehold of the track to the owner of the rabbit sanctuary land at nil cost, subject to a condition that it serves the rabbit sanctuary land only either in its existing use or for agricultural use only.
26. Option Three – Transfer the freehold of the track to Great Chishill Parish Council at nil cost, subject to a condition that it serves the rabbit sanctuary land only either in its existing use or for agricultural use only.

Implications

27. Financial	With Option One, the Council would continue to be liable for maintenance in the future With Option Two or Three, the Council would be relieved of maintenance liability in the future
Legal	Legal advice will be sought to carry out the sale.
Staffing	None
Risk Management	No risks associated with sale.
Equality and Diversity	None
Equality Impact Assessment completed	No Not relevant
Climate Change	None

Consultations

28. Councillor Hales supports the transfer of the track to the Parish Council at nil cost.
29. Councillor Barrett has no objection to the transfer of the track to the owner of the rabbit sanctuary land.
30. Previous to the Portfolio Holder's meeting of 23rd January, Great Chishill Parish Council made the following comments: "Strongly disagree that repairs to the track should be carried out by SCDC and the track transferred to the owner of the rabbit sanctuary land, for the following reasons:
 - (i) Resources could be better used elsewhere, eg more parking spaces in Waller's Close
 - (ii) The rabbit sanctuary is a charitable trust who do not own the land and they do not have the resources to take on responsibility for maintenance of the track
 - (iii) The rabbit sanctuary's temporary planning permission to operate expired in March 2012 and they are still waiting for the determination of a planning application to operate on a permanent basis"

It was explained to the Parish Council that SCDC had a legal obligation to carry out repairs to the track. In response to (i), the Council is currently investigating the possibility of constructing an additional parking space in Waller's Close.

Effect on Strategic Aims

31. **AIM: To make sure that South Cambridgeshire continues to offer outstanding and sustainable quality of life for our residents**

Transferring ownership of the track would relieve the Council from the costs of maintaining it in the future, thus allowing resources to be directed elsewhere

Conclusions / Summary

32. The owner of the rabbit sanctuary land, who has right of access over the Council's track and the garage forecourt in Waller's Close, has agreed to accept the freehold of the track at nil cost, subject to specified conditions and thus take on full responsibility for its future maintenance. Great Chishill Parish Council has also expressed interest in acquiring the track at nil cost. It is in the Council's long term interest to dispose of the land but a decision is now required regarding who should be the new owner, taking into account all considerations including the reasons put forward by each party.

Background Papers: the following background papers were used in the preparation of this report:

None.

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