

Item No. 16.	Classification: Open	Date: 10 February 2015	Meeting Name: Cabinet
Report title:		Re-alignment of an Existing Right of Way where the Council is the Beneficiary of Access and Egress to and from Adjoining Little Dorrit Park	
Ward:		Cathedral	
Cabinet Member:		Councillor Barrie Hargrove, Public Health, Parks and Leisure	

FOREWORD – COUNCILLOR BARRIE HARGROVE, CABINET MEMBER FOR PUBLIC HEALTH, PARKS AND LEISURE

I welcome discussions between council officers and the developer that enable a solution to the issue of re-positioning the service access pathway to Little Dorrit Park.

Little Dorrit Park is a small park, situated within an area of the borough that has been identified in the Southwark Open Spaces strategy as being “below borough standard” in public park provision. I am therefore keen that plans are brought forward which enhance this locally valued green space.

RECOMMENDATIONS

That cabinet

1. Approves the re-alignment (edged in black) of an existing right of way (hatched and cross-hatched in black) on land owned by a third party (“the developer”) identified on the Ordnance Survey Plan at Appendix 1 where the council is the beneficiary of access and egress to and from adjoining Little Dorrit Park for operational purposes on the following terms:
 - a. A financial consideration is received.
 - b. The developer pays a financial contribution towards the council’s surveying fees and legal fees reasonably incurred.
 - c. The alternative location for the new right of way will continue to be used for operational purposes during the construction of the adjoining redevelopment, and continue for operational purposes in perpetuity following construction of the adjoining development.

BACKGROUND INFORMATION

2. The council has been in discussions with the owners of the third party land where the council is the beneficiary over the issue of extinguishment or re-alignment of an existing right of way since July 2013. Caraeno (“the third party”) who owned the adjoining Brandon House site burdened by the existing right of way where the council is the beneficiary, approached the council on the 29 July 2013 ahead of the grant of satisfactory planning permission to discuss the issue

of extinguishment of the existing right of way that leads into adjoining Little Dorrit Park.

3. Caraeno had submitted a planning application and secured planning permission at planning committee on 3rd September 2013 (11/AP/2012) for a comprehensive mixed use residential and commercial scheme with provision of car parking, open space with ancillary plant, soft and hard landscaping and new pedestrian access to Borough High Street with associated and enabling works. Part of the approved scheme involved the construction of four, four storey mews houses in part over the existing right of way.
4. Crest Nicholson (“the developer”) bought the site from Caraeno in November 2013 with the benefit of the satisfactory planning permission.
5. The developer commissioned a consultant to act on its behalf to calculate and negotiate the premium for extinguishment of the existing right of way. The developer initially offered the council a premium to extinguish the right of way and approached the council with a number of alternative routes used by members of the public to maintain an access and egress to and from Little Dorrit Park on land owned by the council. These were considered unviable due to practical constraints.
6. On 9 May 2014, the council held a meeting with the developer’s consultant to discuss the valuation rationale and agreed the best way forward would be for the council to commission an independent valuation following initial validation by the council. It was considered that the initial offer did not represent best consideration to the council under s.123 of the Local Government Act 1972.
7. On 17 June 2014, the developer put forward a simplified, alternative proposal to re-align the existing right of way a few metres south of the existing right of way.
8. The alternative proposal to re-align the existing right of way meant that the four, four storey mews type houses in part originally to be constructed over the existing right of way were to be re-positioned to the south of the existing right of way, resulting in a significant loss of gross development value in floor space to the development.
9. The difference in financial benefit to the developer of constructing the mews houses on the existing right of way and loss of floor space as a result of the alternative proposal to relocate the mews houses just a few metres south of the existing right of way was considered to be the most appropriate way of establishing value.
10. A period of negotiations between the developer and the council resulted in a revised offer reported to the council on 24 November 2014 for consideration. This offer was rejected again by the council. Following a period of further negotiations, on 1 December 2014 the developer increased its offer. We instructed an established firm of valuers who confirmed the valuation and the council agreed in principle to settle at the figure to re-align the existing right of way as it represented best consideration.

KEY ISSUES FOR CONSIDERATION

Basis of disposal

11. Although this is not a disposal as such, it amounts to a disposition of an interest in land where the council is obligated to achieve best consideration for the realignment of the right of way.
12. There is no market for the purchase of the right of way by a third party; the adjoining land owner is treated as a special purchaser in this context as it can be regarded as a ransom situation and the co-operation of the council is required to enable the development to proceed as the value to the council is intrinsically linked by the two respective parties' interests.
13. The council will not only benefit financially but continue to benefit operationally as well: the re-provision of the existing right of way will generate a significant capital receipt and enable the council to continue to service adjoining Little Dorrit Park. The existing right of way is used to service the park, and is not available for members of the general public who use designated, alternative routes into the Park.
14. The strategic director of environment & leisure has confirmed in the declaration as to surplus requirements dated 30 January 2015 that the disposition of this interest is agreed.

Financial and resource implications

15. The proposal to re-align the right of way just a few metres south of the existing right of way will generate a substantial capital receipt for the general fund (capital revenue).
16. There are no direct staffing implications arising from the proposed re-alignment of the existing right of way. Officer time to effect the recommendations will be contained within existing budgeted revenue resources.
17. The developer will pay a financial contribution towards the council's surveying and legal costs reasonably incurred.

Legal implications

18. The adjoining land is held by Crest Nicholson at the Land Registry under title number: SGL 141023. The existing right of way is subject to rights granted by transfer dated 19 July 1978 between Hollyside Limited (previous owners) and the Mayor and Burgesses of the London Borough of Southwark.
19. The council is the beneficiary of the right of way and the transfer document refers to the council paying the freeholder a proportion of the expense of maintaining the roadway in good repair and condition as well as to maintain in good repair and condition good and substantial brick walls on an adjoining boundary wall to Little Dorrit Park.
20. This means the council can be charged a fair proportion for maintenance of the new right of way in future but not the boundary wall as we are obligated to maintain it. A variation to the original transfer plan dated 19 July 1978 will

document the new right of way. This is because we are simply substituting the plan for the one in the 1978 deed and the deed itself refers to the right.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

21. Section 1 of the Localism Act 2011 grants councils a general power of competence whereby a local authority has power to do anything that individuals generally may do. However, that power does not enable a local authority to do anything which it is unable to do by virtue of a pre-commencement limitation. Section 123 of the Local Government Act 1972 is a pre-commencement statute which imposes limitations on the council's power of disposal
22. Section 123 of the Local Government Act 1972 states that except with the consent of the Secretary of State a council shall not dispose of land under that section, otherwise than by way of a short tenancy for a consideration less than the best that can reasonably be obtained.
23. The report indicates in paragraph 10 that the consideration is the best that can reasonably be obtained.
24. Section 120 of the Local Government Act 1972 permits the acquisition of land for the purpose of any of the council's functions under any enactment or for the benefit, improvement or development of the council's area. Either or both of these permissions cover the proposed re-alignment of the right of way.
25. Cabinet may proceed with the approval of the recommendation.

Strategic Director of Finance and Corporate Services (FCS14/045)

26. The Strategic Director of Finance and Corporate Services notes the receipt for the re-alignment of the existing right of way; this receipt to be allocated to the General Fund.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
Appendix 1	Plan showing existing and new location of the right of way

AUDIT TRAIL

Cabinet Member	Councillor Barrie Hargrove, Public Health, Parks and Leisure	
Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	Paul Murphy, Senior Development Surveyor	
Version	Final	
Dated	30 January 2015	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		30 January 2015