

APPENDICES

NORTH DUDLEY AREA COMMITTEE

DATE: 17 JUNE 2003

LAND REAR OF 74 WOOD ROAD, LOWER GORNAL

(As shown on the plan attached)

BACKGROUND

A report regarding this matter was deferred from the North Dudley Area Committee meeting of the 3 April 2003 in order for a Member's site visit to take place. The results of the site visit will be verbally reported at this meeting.

76 Wood Road, Lower Gornal is a former council house purchased under the right to buy. The current owner purchased the property from the original purchaser in January 1997. No. 74 Wood Road is a housing controlled property with a relatively new tenant.

The owner of 76 Wood Road maintains an area of land to the rear of No. 74 Wood Road as marked on the attached plan. This land is incorporated within their garden by a large privet hedge which is well established. The owner of 76 Wood Road states that when they moved into the property in 1997 this area of land was used by the previous owner as garden land and at that time he undertook a search at Land Registry, when the land was found to be unregistered. In 1999 the owner of 76 Wood Road swore a Statutory Declaration which stated that the land had been used as part of the garden to his property since moving into the property and that the only access to the property was through his own garden.

In September 2002 the new tenant of 74 Wood Road wanted to demolish the hedge separating the garden of 74 Wood Road from the land at the rear, in order to extend their garden onto this land. The owner of 76 Wood Road contacted the Council and the tenant was asked not to remove the hedge until the matter had been fully considered.

The aerial photographs for the area have been checked dating back to 1976, when there was no hedge in existence. However, from 1981 onwards the hedge is clearly shown separating the land from the garden of 74 Wood Road.

The owner of 76 Wood Road has used this land as part of his garden since acquiring the property, however, in order to gain a possessory title undisputed occupation of the land has to be proven for a period of 12 years and the owner of 76 Wood Road has only been in occupation for 6 years. Furthermore, when the Council was considering housing stock transfer all of Housing's land was voluntarily registered with Land Registry and this area of land has been registered as owned by the

Council. The owner of 76 Wood Road is therefore unable to claim possessory title of this land.

The owner of 76 Wood Road has stated that he would wish to purchase or lease the area of land to continue to maintain it as part of the garden.

COMMENTS

The relevant Council departments have been consulted regarding this matter and there have been no objections to the sale or lease of the land to the owner of No. 76 as they have been occupying the land since purchasing the property.

The repossession of the land by the Council for it to be returned to the tenancy of No. 74 is likely to result in legal action and the matter would then be dealt with through the courts. This action could incur heavy costs for the Housing Department. In order to assess the viability of winning a case the Housing Department would also incur fees in gaining Counsel's opinion.

PROPOSAL

That Area Committee advise the Lead Member for Housing to sell or lease the land to the rear of No. 74 Wood Road to the owner of 76 Wood Road on terms and conditions to be negotiated and agreed by the Chief Legal and Property Officer.

BACKGROUND PAPERS

- 1 Letter from applicant dated 19/09/02
2. Affidavit dated 11/08/1999
3. E-mails and memos from the Legal and Property Department 4/12/02
4. E-mails and memos from the Directorate of Urban Environment 10/12/02, 11/12/02 and 9/12/02
5. E-mails and memos from the Housing Department 3/12/02
6. Minutes of the North Dudley Area Committee meeting 3 April 2003.

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