

**Central Dudley Area Committee – 16<sup>th</sup> November 2010**

**Report of the Director of Corporate Resources**

**Application in respect of land and property owned by the Council**

**Purpose of Report**

1. To bring to the Committee's attention a request relating to land and property controlled by the Council and to seek the Committee's recommendations on the request.

**Background**

2. An application has been received to purchase all of the land at Firs Street, Dudley, as shown marked on the plan attached.
3. The applicant owns Hermes House which is adjacent to the land in question. He is considering opening a Nursery business at Hermes House and originally requested to purchase 15 metres of land marked "Area A" on the attached plan to provide a rear vehicular access to the Nursery. The current access to Hermes House on Hall Street is deemed unsuitable by Development Control but they consider an access off Firs Street may be acceptable.
4. The land is under the control of the Directorate of the Urban Environment and is held for Leisure purposes. The land is overgrown with weeds and trees. The state of the site led to a number of complaints in 2005 and a major tidy up was undertaken. It is now fenced, gated and locked.
5. The Council acquired the land by a conveyance dated 21st December 1917. The Conveyance contained a provision that the land should be appropriated for use as a garden or open space in connection with the adjoining maternity home. The maternity home was transferred to the West Midlands Regional Health Authority on 1st April 1974 and has since been used as a clinic. As the Firs Street land had not been appropriated for use with the maternity home, it remained with the Council. Therefore, in order to regularise the position, the land should be appropriated to purposes of Public Open Spaces Act 1906.
6. In 1984, the Freight Transport Association, owners of Hermes House, were going to purchase this land but negotiations failed to take the matter forward.
7. In 1986 the Council decided to retain the land as a Nature Conservation Garden. The land was then used as a Community Garden for a number of years. It was then fenced and gated.

8. In 2003, an application to purchase the site for residential development was refused as planning consent would have been resisted.
9. All the relevant Council Directorates have been consulted and the following comments received.
10. The Directorate of the Urban Environment has advised that all of the land of the former Community Garden on Firs Street is classed as green space. Any proposals for development would normally be resisted including an application for a change of use. However, the land is now regarded as having little amenity value as open space and has become a liability due to the cost of maintenance.
11. Prior to any disposal, the Tree Protection Officer would have to undertake a survey of the site to assess whether Tree Protection Orders should be sought. The site should only be sold with strict conditions regarding its future use. A sale would have to be subject to detailed planning permission to safeguard the trees and restrict the future use of the site.
12. The applicant has discussed his proposals for the Nursery with Planning Policy and has been advised that the aim is to safeguard the land for its nature conservation value. The applicant has since advised that he would be willing to purchase all of the land and use the land not required for the new access to the nursery as a "Nature Garden" or a "Forest School"; as a valuable teaching tool for the children. Should the land be declared surplus to requirements and negotiations commence for its sale, he would then be willing to submit a planning application to fully explore proposals for the site.
13. Further more, Planning Policy have advised that if the future of the nursery was affected by the lack of appropriate access, then they would be willing to relax their standpoint and would not raise an objection to the sale of the whole site subject to a successful planning application. The application would have to address the issues of the land remaining Open Space and ensure that the trees and the wildlife were not significantly affected. A Forest School would be looked upon favourably.
14. The Ward Members have been consulted regarding the application and they have recommended that all of the land should be retained in Council ownership. They are aware that the land in question has become overgrown and has not been used for community use for a while. The Ward Members hope that, sometime in the future, funds to improve the site as a leisure facility may become available and this future potential will be lost if the land is sold. They believe that the land was intended for community use and should always be retained for that purpose.
15. The Director of Corporate Resources has referred the matter for consideration by the Area Committee in the light of the recent proposals by the applicant set out in this report. The applicant would also value the opportunity of addressing the committee.

## **Finance**

16. The sale of the land generates a capital receipt of the Council, the size of which would depend on a valuation placed on the site by the Director of Corporate Resources the price finally agreed between the parties.

## **Law**

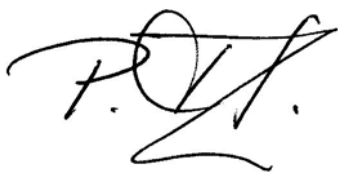
17. Section 122 of the Local Government Act 1972, enables the Council to appropriate land that is no longer required for the purpose for which it is held.
18. Section 123 of the Local Government Act, 1972, enables the Council to dispose of its interests in land at the best price reasonably obtainable.

## **Equality Impact**

19. The proposal takes into account the Council's policies on equality and diversity

## **Recommendation**

20. That the Committee recommend that the Director of Corporate Resources either:
  - a) Approves the application to purchase all of the land, subject to planning consent being obtained.
  - b) Approves the sale of the land required for access to Hermes House only (Area A on the attached plan).
  - c) Refuses the application.
21. That if any land is retained in Council ownership, that the Committee recommend that the Cabinet Member for Personnel, Legal & Property appropriates the land to the purposes of Public Open Spaces Act 1906.



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**Philip Tart**  
**Director of Corporate Resources**

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## **List of Background Papers**

1. Letters from the applicant.
2. E-mails and memos from the Council Directorates.