

Brierley Hill Area Committee – 5th July 2007

Report of the Director of Law and Property

Applications in respect of land and property owned by the Council

Purpose of Report

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

Background

2. The Council has interests in a substantial amount of land and property across the Borough, those interests being controlled by the Council's various Directorates.
3. Requests are received from the public on a regular basis for property related matters such as purchases, leases, licences, easements and access agreements. Those requests are dealt with by the Directorate Law and Property who carry out a consultation process with the Council's relevant Directorates before preparing a report for Committee to consider.
4. Reports for this Committee are attached as appendices and the proposal resulting from the consultation on each particular request is set out at the end of each appendix. A plan is provided where required.

Finance

5. In general terms leases, easement and access agreements each generate an income for the Council. 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 Law and Property and the price finally agreed between the parties.

Law

6. Section 123 of the Local Government Act, 1972 enables the Council to dispose of its interests in land at the best price reasonably obtainable.

Section 123(2A) of the Local Government Act, 1972 requires the Council prior to any disposal of open space to advertise notice of its intention to do so for two consecutive weeks in a newspaper circulating in the area in which the land is situate and to consider any objections which may be made.

The various statutory undertakers will have statutory powers to install equipment in Council owned land, but they do apply to the Council for a formal agreement, such as an easement, on a regular basis.

Section 32 and 34 of the Housing Act, 1985 and the General Consents for the disposal of Houses and Land, 1999, enable the Council to let and dispose of land and buildings held for housing purposes at the best price reasonably obtainable.

Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 enables the Council to apply provision to any land it sells restricting its future use, provided the relevant section of the Act are specifically referred to in the transfer document and are registered as a local land charge.

Section 111 of the Local Government Act, 1972 empowers the Council to do anything calculated to facilitate or which is conducive to or incidental to the discharge of any of its functions.

Equality Impact

7. The proposals take into account the Council's equal opportunities policies.

Recommendation

8. It is recommended that proposals contained in each of the attached appendices be approved.



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John Polychronakis
Director of Law and Property

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List of Background Papers
See individual appendices

Brierley Hill Area Committee

Date: 5th July 2007

Request for an Access Easement

Location: Land rear of Hope Street, Wordsley
(As shown on the plan attached)

Background

A request has been received from the owners of 11 & 12 Hope Street, Wordsley for a permanent easement over Council owned land as shown hatched on the plan attached. There is already a garage at No 11 and the applicant wishes to create a parking space at the rear of No 12. The easement is required to enable the applicant's tenants to have vehicular access to the rear of the properties via the existing track off Barnett Lane.

The land is under the control of the Director of the Urban Environment and is used as an entrance to allotments which are leased to, "The Trustees of the Barnett Lane Allotments". The site was purchased in November 1946 for use as allotment land and it is a statutory allotment site.

There are existing Access Agreements to the rear of other properties in Hope Street and a former resident of 11 Hope Street terminated such an agreement on 12th November 2001. These agreements are personal agreements and are not transferable. The standard Access Agreement can be determined by either party giving one month written notice. They usually terminate on a change of occupant with the new occupier having to apply to the Council for an Access Agreement in their own name.

The applicant wishes to have a more permanent right for vehicular access over the track which may be passed on with the Title to his properties at 11 & 12 Hope Street. This would also allow the applicant to pass on the access right in any future leases to the new tenants without referring the matter to the Council. The applicant was also unwilling to accept an agreement which would allow the Council to give 28 days to terminate at any time.

Comments

All the relevant Council Directorates have been consulted.

The Directorate of the Urban Environment object to the proposal as it would be prejudicial to landowning interests of the Council. There is no objection to an Access Agreement which would not prejudice future changes. Possible changes range from a total redevelopment of the site to improvements to the access to the allotment site. Currently, there is a waiting list for allotments and for the foreseeable future the site will be only used for allotments.

The Directorate of Law & Property has advised that the applicant could be granted a permanent easement with a clause allowing the Council to give 28 days notice. This would have the advantage of benefiting the applicant who would be able to pass the access rights on the tenants without first obtaining permission from the Council. The Council in turn would retain the right to terminate the agreement by giving 28 days

notice should the land be required for other purposes. This alternative was still unacceptable to the applicant as they had intended to improve the garages at the rear of their properties and any sudden withdrawal of access rights would render the garages inaccessible, thus wasting the proposed investment in them.

The Directorate of Law & Property have also advised that there are covenants on the land which state that The Council shall not build any factories, workshops or sheds.

Following discussion with the applicant regarding the comments received from the Council Directorates, the applicant has indicated that if the application for a permanent easement is refused, then they would accept an Access Agreement.

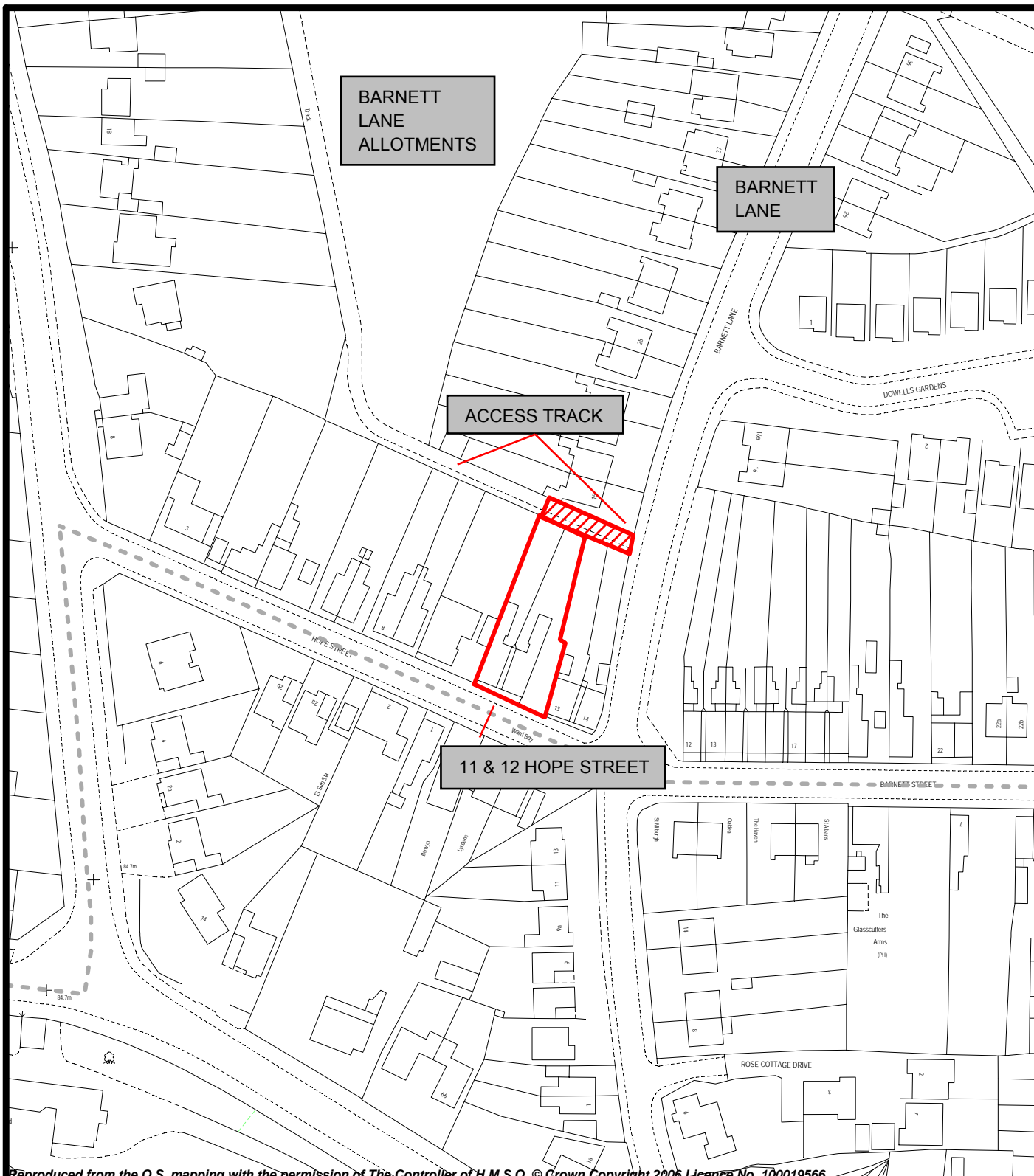
Proposal

That the Area Committee advise the Cabinet Member for Leisure to refuse the application for a permanent easement over the Council owned land at the rear of Hope Street but to grant an Access Agreement on terms and conditions to be negotiated and agreed by the Director of Law & Property.

Background papers

1. Letter(s) from the applicant.
2. E-mails and memos from the Council Directorates.

Contact Officer: Alan Nugent, Property Manager, Ext.5351



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<p>TITLE:</p> <p>APPLICATION FOR AN EASEMENT TO REAR OF 11 & 12 HOPE STREET WORDSLEY</p>		<p>Corporate Estate Services Directorate of Law and Property 3 St James's Road DUDLEY West Midlands DY1 1HZ</p>
<p>OS data reproduced with the permission of the Controller of HMSO 2004 Licence No 100019566</p> <p>CREATED BY: ALAN NUGENT, PROPERTY MANAGER, EXT 5351</p>	<p>SCALE: 1 : 1250</p> <p>DATE: 12-SEP-2006</p>	

Brierley Hill Area Committee

Date: 5th July 2007

Request to Purchase Land

Location: Springfield Neighbourhood Centre, Springfield Road, Brierley Hill
(As shown on the plan attached)

Background

An application has been received from Lions Amateur Boxing Club, leaseholders of the above mentioned Council owned property, as shown marked on the plan attached.

The land is under the control of the Directorate of the Urban Environment.

The Lions Amateur Boxing Club is a registered charity that works with eight year olds up to the age of fifty plus and currently holds a 25 year lease on the building at a peppercorn rent. Since the lease started they now have over 400 members, young people from the under privileged, excluded young offenders and many more. The applicants state that since they have opened there has been a better community spirit and a drop in juvenile crime. They recently erected an extension to the building, in order to make more space to the training area, as they could not get everyone into the old building. The applicants would like to purchase the land and wishes to continue using the land in its existing use.

Comments

The relevant Council Directorates have been consulted regarding this matter and no objections to the disposal have been received.

However, the Directorate of the Urban Environment consider that a 2m strip being retained in Council ownership in order to protect the public footpath and all existing rights of access of the track is maintained.

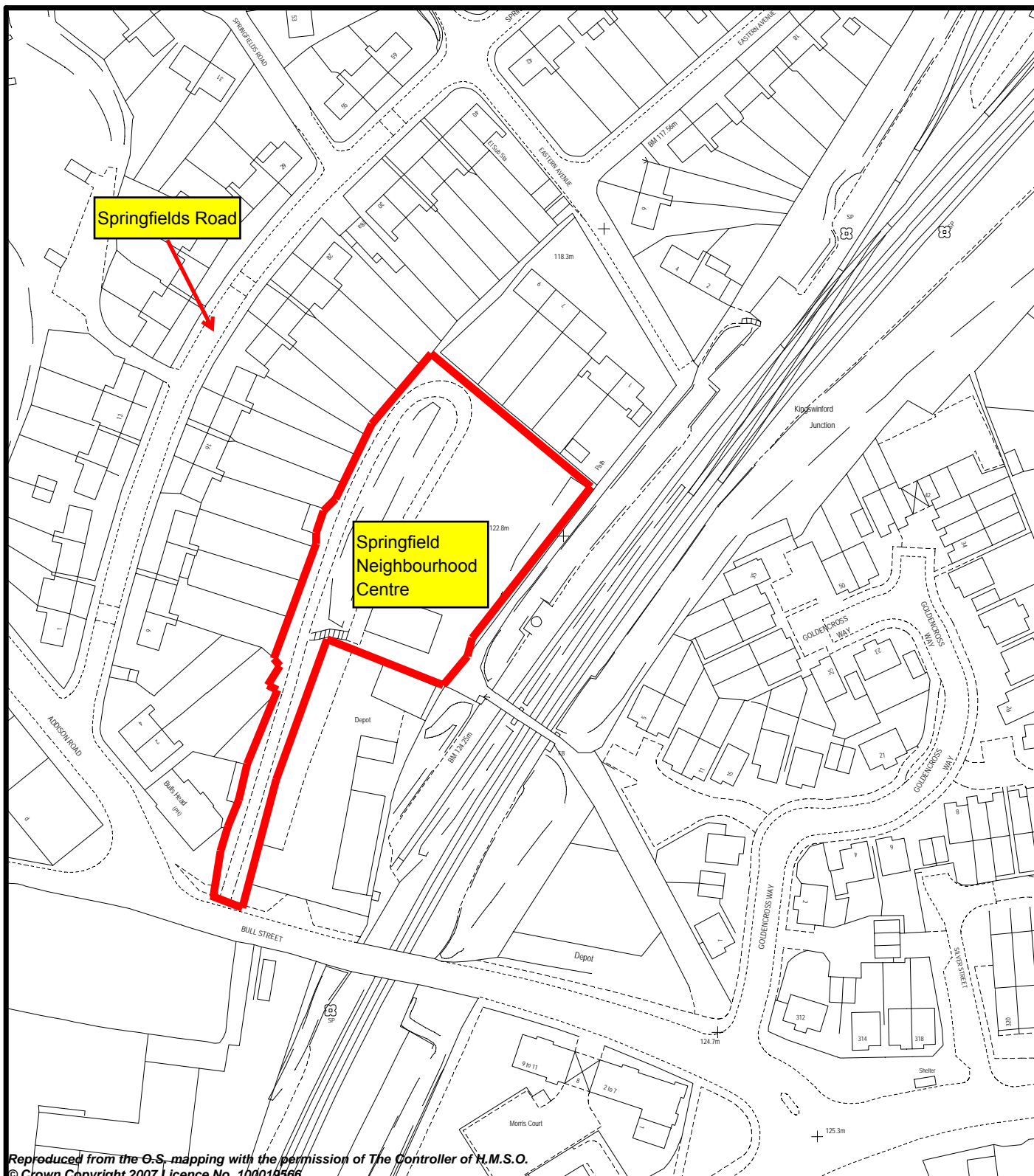
Proposal

That the Area Committee advise the Cabinet Member for Leisure and the Cabinet Member for Personnel, Legal and Property to approve the application to The Lions Amateur Boxing Club for the purchase of land at Springfield Neighbourhood Centre, Springfield Road, Brierley Hill on terms and conditions to be negotiated and agreed by the Directorate and Law and Property.



Background papers

1. Letter(s) from the applicant.
2. E-mails and memos from the Council Directorates.

Contact Officer: Sonia McLean, Property Manager, Ext. 5321



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<p>TITLE:</p> <p>Springfield Neighbourhood Centre Springfield Road Brierley Hill</p> <p>28506/FMSF</p> <p>OS data reproduced with the permission of the Controller of HMSO 2007 Licence No 100019566</p>	 <p>SCALE: 1 : 1250</p> <p>DATE: 19-APR-2007</p>	<p>Corporate Estate Services Directorate of Law and Property 3 St James's Road DUDLEY West Midlands DY1 1HZ</p> 
<p>CREATED BY: Sonia McLean - Property Manager, Ext. 5321</p>		

Brierley Hill Area Committee

Date: 5th July 2007

Request to Grant Licence to Dudley Sports Bowling Club and Permission to erect a Portacabin

Location: King George VI Park, Park Lane, Kingswinford

(As shown on the plan attached)

Background

An application has been received from Dudley Sports Bowls Club in Stourbridge to grant a licence to occupy and permission to erect a portacabin on the above mentioned Council owned land, as shown marked on the plan attached.

The Bowls Club need to formalise their agreement of continued use for the playing of bowls on King George VI Park Bowling Green in which they have booked a number of sessions on the green for the period of the bowling season namely; Monday, Tuesday and Thursday evenings and Wednesday afternoons. The formalisation of this agreement will enable them to proceed in a funding grant application in which they have identified sources available, apart from the Lottery, as they are seeking to replace the existing wooden shed/hut, which they use as a headquarters, with a portacabin.

The land is under the control of the Directorate of the Urban Environment.

Comments

All of the relevant Council Directorates have been consulted regarding this matter and no objections have been received. However, the Directorate of the Urban Environment's Development Control Division advises that planning permission will be required for the proposed portacabin as the Bowling Green is within a Conservation area.

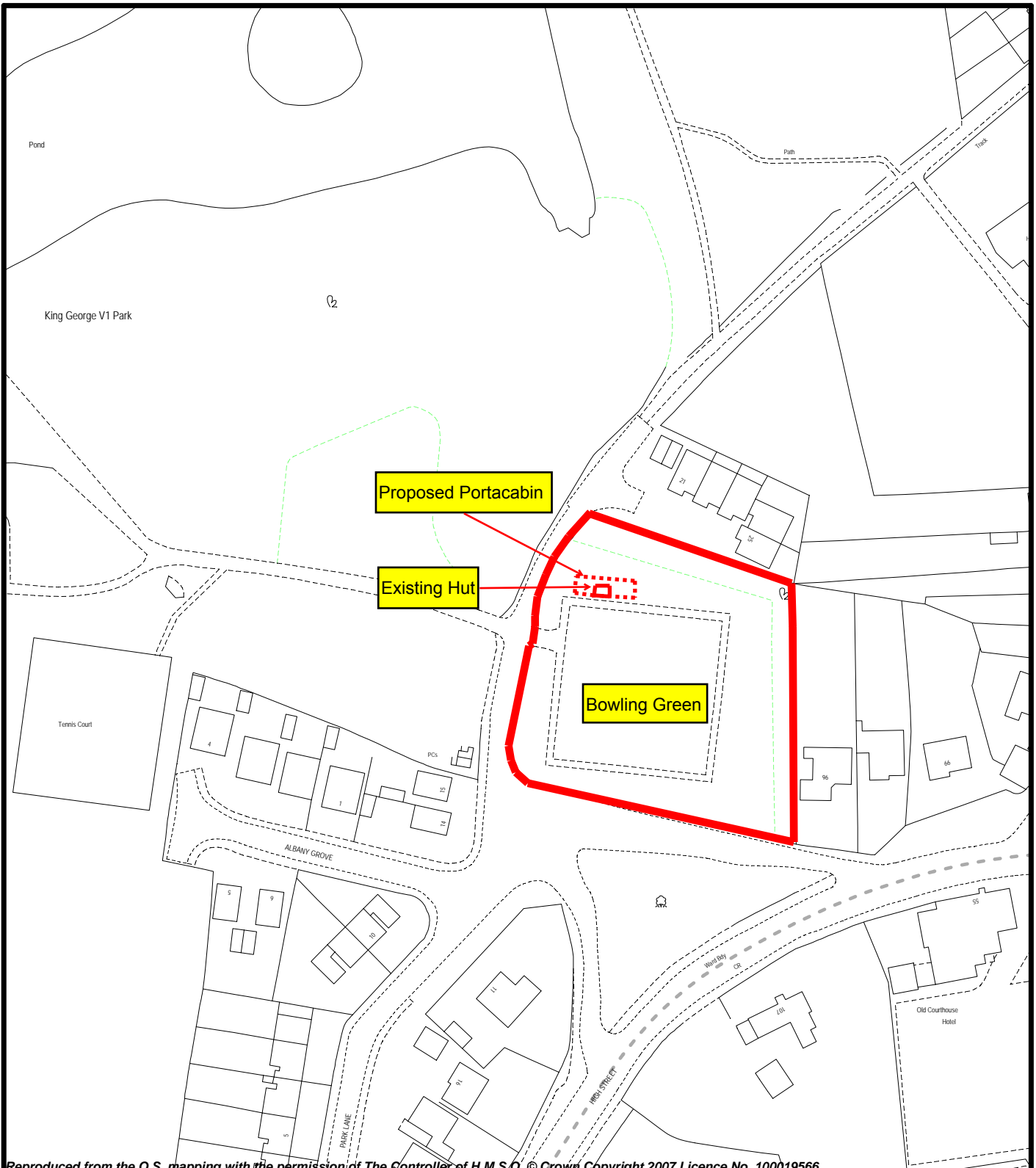
Proposal

That the Area Committee advises the Cabinet Member for Leisure and Culture to recommend a licence be granted to Dudley Sports Bowls Club, Stourbridge to occupy and permission to erect a portacabin on King George VI Park, Park Lane, Kingswinford is approved on terms and conditions to be negotiated and agreed by the Directorate and Law and Property.



Background papers

1. Letter(s) from the applicant.
2. E-mails and memos from the Council Directorates.

Contact Officer: Sonia McLean, Property Manager, Ext. 5321



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<p>TITLE:</p> <p>King George VI Park Bowling Green Park Lane Kingswinford</p> <p>Ref: 31241/FMLE</p> <p>OS data reproduced with the permission of the Controller of HMSO 2007 Licence No 100019566</p>	 <p>SCALE: 1 : 1250</p> <p>DATE: 03-JAN-2007</p>	<p>Corporate Estate Services Directorate of Law and Property 3 St James's Road DUDLEY West Midlands DY1 1HZ</p> 
<p>CREATED BY: Sonia McLean - Property Manager, Ext. 5321</p>		

Brierley Hill Area Committee

Date: 5th July 2007

Request to Purchase Land and for the release of a Restrictive Covenant

Location: Land at 159 Balfour Road, Kingswinford

(As shown on the plan attached)

Background

A request has been received from the owner of 159 Balfour Road, Kingswinford to have the Restricted Covenant lifted on the land he purchased from the Council in 1992. The land was sold for use as garden land only. He now wishes to build a dwelling on this land and will also require an extra piece of land to allow easier access.

The Restrictive Covenants stipulate:

- (i) To use the land transferred or any part, for the purpose only of garden land ancillary to the dwelling house.
- (ii) To maintain the boundary along the north boundary of the land.
- (iii) Not to use the land for commercial purposes.
- (iv) To use the land for leisure purposes only.

The land is under the control of the Director of the Urban Environment and was Public Open Space before it was sold. It formed a strip of land linking two areas of open space. This strip was split into three and sold to the owners of the adjoining properties. It is believed that this strip of land was sold due to anti-social behaviour.

To provide the access to the new dwelling, the applicant will have to use part of the current garden of 159 Balfour Road and will also require a triangle of land which is currently Public Open Space. These two areas of land, which would form the access to the new dwelling, are shown on the plan attached.

An application to purchase all the open space north of 159 Balfour Road for a development has recently been refused.

Comments

All the relevant Council Directorates have been consulted.

The Directorate of the Urban Environment have objected to the proposals. The proposed new house would be very close to the Pensnett Trading Estate which has been generating complaints from Blandford Mere residents for years. The occupiers of a detached house on the proposed site would almost certainly complain about activities on the trading estate. If a complaint was received about the effect of noise from the Trading Estate from any future occupant, then it would have to be investigated. This could lead to the Council determining that there was a statutory noise nuisance which would have an adverse effect on the industry based in the Trading Estate.

An acoustic report would be required with any planning application made to the Council. Initial consideration is that it is too close to industrial units and a refusal on noise grounds would be likely.

This land was deliberately left undeveloped when the housing estate was built as a buffer to the industry. It has been eroded by more housing development over the years but the proposed house would be virtually touching the trading estate boundary. It would also weaken the case for stopping any further development in the remaining buffer strip. It has been recommended that the sale of the small area of Public Open Space and the release of the Restrictive Covenant be conditional upon the granting of planning permission for the proposed house.

There could be an adverse effect upon the trees in the adjoining landscaped strip within the trading estate.

There is an objection to the sale of the Public Open Space as this would set a precedent for further sales. If the sale of the small area of Public Open Space was approved, then a footway crossing must be constructed at the applicant's expense.

The Directorate of the Urban Environment have also advised that there is a possibility of land contamination being present which the applicant should be made aware of. This issue would have to be addressed at the planning application stage.

The Director of Law and Property has advised that, as well as the triangle of land which currently forms part of 159 Balfour Road, an extra triangle of land is required for the proposed access to the new dwelling. This triangle of land is currently laid out and maintained as Public Open Space. Part of this small triangle of land is still in the ownership of the original developer and would have to be purchased separately.

If the small area of land required for access is sold, then it will be subject to Section 123(a) of the Local Government Act 1972. This requires that the Council, prior to any disposal of Public Open Space, to advertise notice of its intention to do so for two consecutive weeks in a newspaper circulating in the area in which the land is situated. The Council then has to consider any objections which may be made. The applicant is required to bear the cost of advertising.

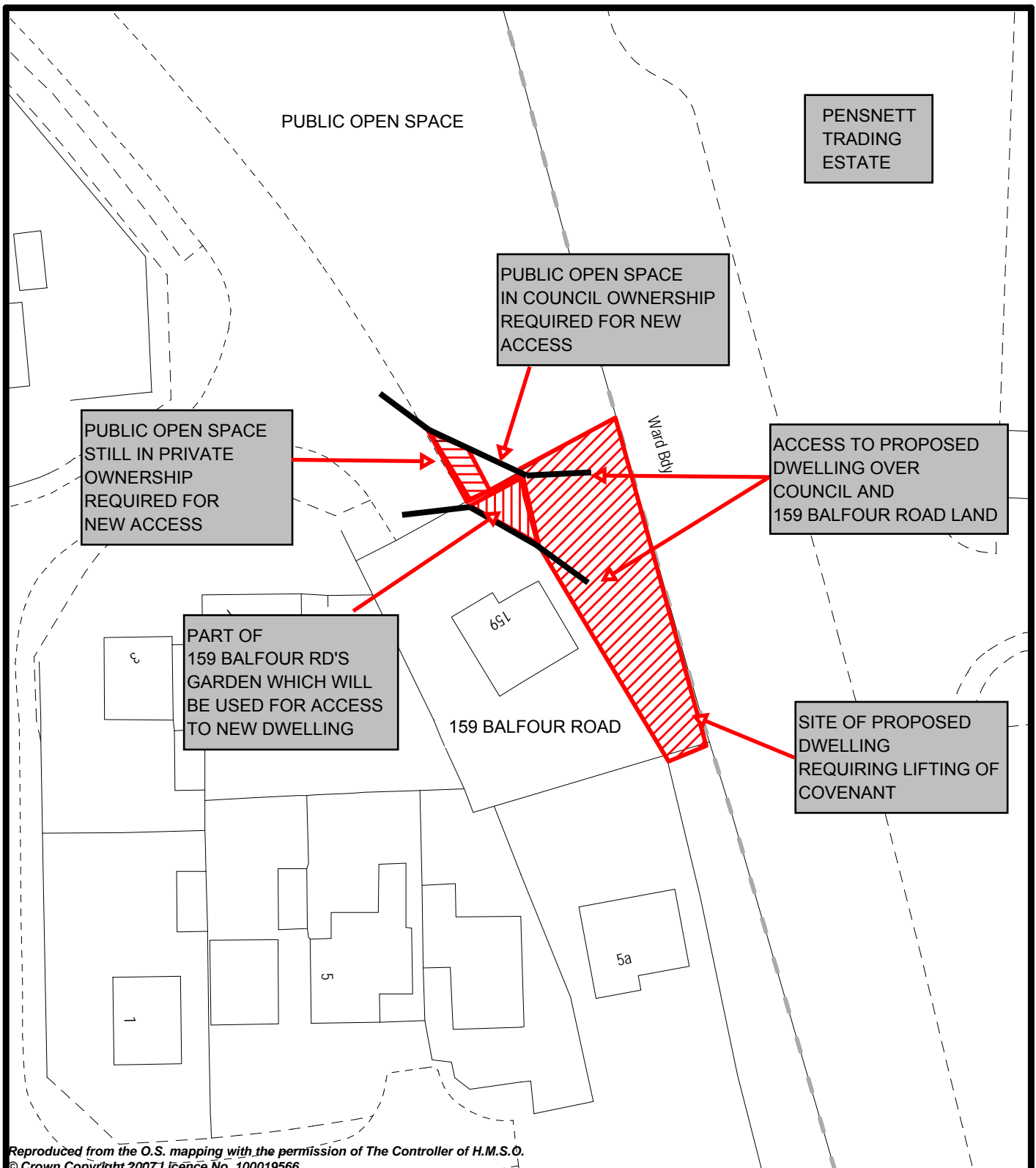
Proposal

That the Area Committee advises the Cabinet Member for Leisure to refuse the sale of the area of Public Open Space and the lifting of the Restrictive Covenants.

Background papers

1. Letter(s) from the applicant.
2. E-mails and memos from the Council Directorates.

Contact Officer: Alan Nugent, Property Manager, Ext.5351



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