

Halesowen Area Committee – 14th March 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.

John Polychronakis

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John Polychronakis
Director of Law and Property

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List of Background Papers

See individual appendices

Halesowen Area Committee

Date: 14th March 2007

Request to: Vary a right of access

Location: 57 George Road, Halesowen
(As shown on the plan attached)

Background

An application has been received from the owner of 57 George Road, Halesowen, a former Council house purchased under the right to buy, to vary a right of access that crosses the property. The access rights currently allow No. 55 George Road to have rear pedestrian access to the property along the side and across the rear garden of 57.

55 & 53 are Council owned properties occupied by tenants. 51 has been sold under the right to buy and is in private ownership.

No's 47 to 57 are a block of 6 houses. There is an entry between 51 and 53 that allows those properties rear access and 49 and 55 currently gain rear access across the end properties.

The applicant is suggesting that the right of way that runs across his property, as marked on the attached plan, in favour of the Council, is extinguished and that an alternative route of access is created along the entry between 51 and 53 George Road and across the back garden of 53.

The entry between 51 & 53 is owned partly by 51 and partly by 53 (the Council) and each have access rights across the others land. In order for this right of way to be relocated across this entry, the owner of 51 would have to be in agreement and their rights would have to be legally varied to allow a right of access by the owner of 55 along the entry and across part of their rear garden. Also the tenant of 53 would have to be in agreement to allow an access to be created that crosses their rear garden.

The land is controlled by the Directorate of Adult, Community and Housing Service who would also have to agree to the changes.

Comments

The relevant Council Directorates have been consulted and no objections have been received.

The Directorate of Adult, Community and Housing Services have consulted their tenant at 53 who has no objections to the proposal, providing that suitable fencing, gates and a pathway is created for the access way, at the applicant's expense.

The Directorate of Law and Property state that the variation would be subject to the agreement of the owner of 51 who would be contacted by the Councils Surveyor if the application is approved. The negotiations may be complicated and potentially costly as freehold titles will have to be amended to reflect the amended rights and all costs involved will have to be met by the applicant.

The applicant has been informed of the potential costs involved in the matter and still wishes to proceed, as the alternative would be to move house. He therefore wishes to explore this option first before uprooting his family, as they are settled in the area.

Proposal

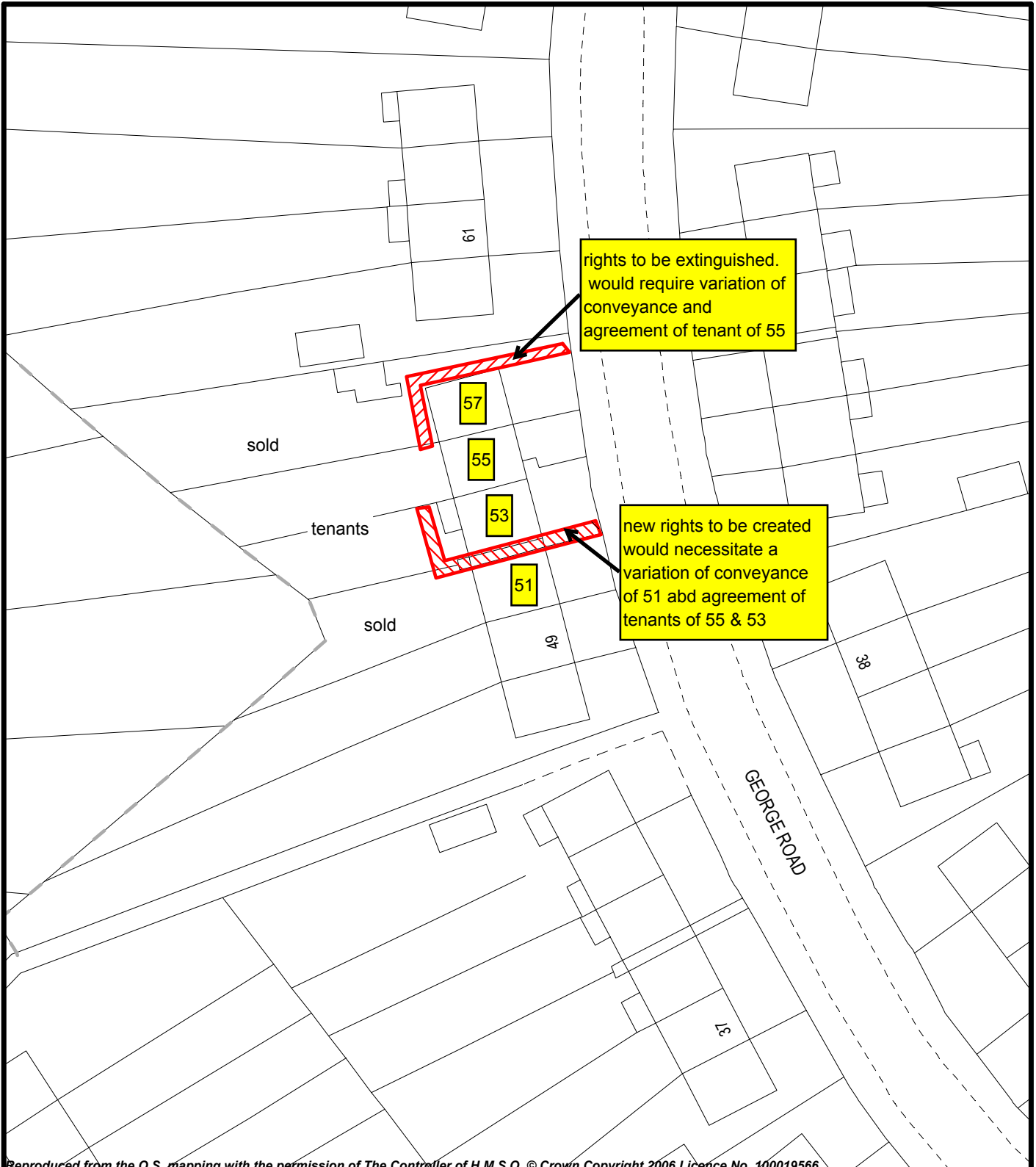
That the Area Committee advise the Cabinet Member for Housing to approve the application to vary a right of way that crosses 57 George Road, Halesowen, subject to the applicant paying all costs involved in the matter, and subject to the approval of the owner of 51, upon terms and conditions to be negotiated and agreed by the Director of Law and Property.

Background papers

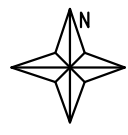

1. Letter(s) from the applicant.
2. E-mails and memos from the Council Directorates.

Contact Officer:

Gill Hudson, Property Manager, Ext. 5311



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<p>TITLE:</p> <p>Variation of Covenant at: 57 George Road Halesowen</p> <p>OS data reproduced with the permission of the Controller of HMSO 2006 Licence No 100019566</p> <p>CREATED BY: Gill Hudson, Property Manager. Ext:5311</p>	 <p>SCALE: 1 : 500</p> <p>DATE: 01-DEC-2006</p>	<p>Corporate Estate Services Directorate of Law and Property</p> <p>3 St James's Road DUDLEY West Midlands DY1 1HZ</p> 
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Halesowen Area Committee

Date: 14th March 2007

Request for: Visibility Splay

Location: Bromsgrove Street, Halesowen
(As shown on the plan attached)

Background

A request has been received from a developer to have a visibility splay over the Council owned land as shown marked on the plan attached.

A small triangle of land is required for a visibility splay to a new day nursery at the front of Hillside bungalow off Bromsgrove Street. The Planning Application for the Day Nursery was approved with conditions (planning application P06/0550 and P00/51839 refer). One of these conditions was to provide a visibility splay at the exit onto Bromsgrove Street.

The applicant was willing to purchase or acquire a long lease of the land required for the visibility splay. However, the Directorate of Law & Property considered that granting the developer a Restrictive Covenant over the Council owned land was more appropriate.

The land is under the control of the Director of Law & Property.

Comments

The relevant Council Directorates have been consulted regarding the application.

The Directorate of Law & Property considered the application and the requirements the developer had to meet for the Planning Application. The sale or long lease of the area required for the visibility splay would place an unnecessary restriction on any possible future use or development of the Councils land. Therefore the land should be retained in Council ownership. A Restrictive Covenant on the area required, restricting its use in favour of the owner of the Day Nursery, was considered more appropriate. This way, the Council would retain the ownership of the small triangle of land required for the visibility splay whilst allowing the developer of the Day Nursery to meet the Planning Conditions.

As the Planning Application has been approved with conditions including a suitable visibility splay, it might be considered unreasonable if the Council did not now allow the granting of a Restrictive Covenant.

At the last meeting, Members were concerned with the loss of trees on the site. Whilst the site including the land needed for the visibility splay is covered by a blanket Tree Preservation Order, the grant for planning permission for the Day Nursery is suitably conditioned to include a landscape scheme, which would allow the development to proceed. On inspection, provision of the visibility splay would not impact on any existing trees.

The Director of the Urban Environment considers that any approval should be subject to the applicant complying with the planning conditions included in the planning application, including a suitable visibility splay.

Proposal

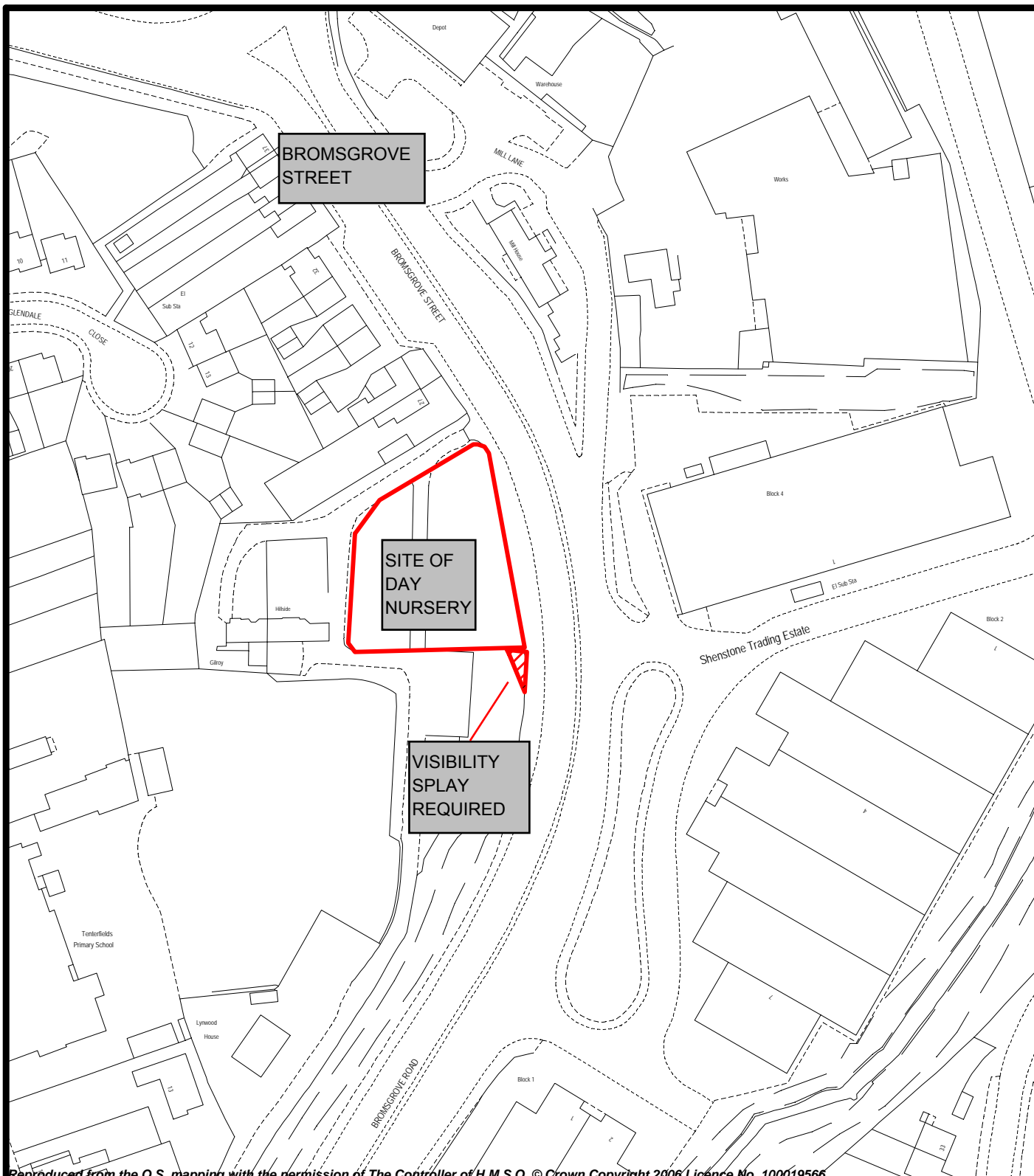
Following further officer consideration of this application, it is proposed that the Area Committee advises the Cabinet Member for Personnel, Law & Property to approve the application for the Restrictive Covenant on the Council owned land at Bromsgrove Street, Halesowen, subject to compliance with Planning Conditions, and on terms and conditions to be negotiated and agreed by the Director of Law and Property.

Background papers

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

Contact Officer:

Alan Nugent, Property Manager, Ext.5351



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TITLE:

VISIBILITY SPLAY
 PROPOSED DAY NURSERY
 BROMSGROVE STREET
 HALESOWEN



SCALE:

1 : 1250

DATE:

16-MAY-2006

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