



Delegated decision report

DECISION UNDER DELEGATED POWERS

**DECISION CANNOT BE TAKEN BEFORE FRIDAY,
12 OCTOBER 2012**

Title	GRANT OF RIGHT OF ACCESS AT ST GEORGE'S SCHOOL, WATERGATE ROAD, NEWPORT, ISLE OF WIGHT
Report of/to	Report of the Deputy Leader and the Cabinet Member for the Economy Regulatory Services and the Cabinet Member for Children's Services and Education

EXECUTIVE SUMMARY

1. To approve the grant of a legal right of way over the driveway to St George's School, Watergate Road, Newport, to provide access for an adjoining landowner, to enable redevelopment of that site for residential use.
2. The outcome will be the best possible capital receipt from this grant of right of way towards the funding of the capital costs of delivering the schools reorganisation programme, as set out in the approved cabinet decision reference 76/07 ("Schools Reorganisation – outcome of January/February consultation"), and in accordance with the 2011 Strategic Asset Management Plan.

BACKGROUND

3. St George's School, Watergate Road, Newport is currently accessed via a driveway privately owned by the Isle of Wight Council. A piece of land immediately adjacent to the school, previously a suitable nursery site, has potential for residential development but does not have the benefit of a vehicular access suitable for redevelopment. A site plan is attached as appendix 1 showing St George's School in blue, the school access road in pink and the former nursery site in green.
4. The owner/developer of the nursery site has approached the council, seeking the grant of a legal right of way across the council's school access road to enable the nursery site to be redeveloped to residential use in return for a financial payment, road improvements and replacement car parking on the school site. Whilst the nursery site has vehicular access for its current use, an alternative right of way is required to enable redevelopment to residential use. Once improved, the school access could be suitable to provide such access, or alternatively it may be possible for the developer to create an access through a neighbouring property.

5. The developer will be required to rebuild the St George's School access road as a condition of the planning permission. Were this proposal accepted and the road rebuilt, it will greatly improve the road and the School will receive the additional benefit of a new, dedicated pavement for safe pedestrian access. The cost of providing this pavement is considered as one of the benefits that will accrue from this arrangement, and is reflected in the value to the council set out below. The cost of the road is excluded as it will be provided as part of the planning permission and not as a result of the land deal.
6. The council's freehold interest in the driveway to St George's School will not transfer to the developer – the council will grant a legal right of way only over this land.
7. The developer currently proposes to construct eight dwellings on the nursery site: 4 three bedroom semi-detached houses, 2 three bedroom detached houses and 2 four bedroom detached houses. A plan of the developer's current proposal is attached as appendix 2. The developer has had pre-application meetings with the local planning authority to gauge whether such an application would be likely to be accepted, and has submitted a planning application.
8. Because the council owns land which "unlocks" the value of adjoining land, the council effectively owns a 'ransom strip'. The value of this ransom strip is governed by case law, in particular *Stokes vs. Cambridge*, where the owner of the right of way can require a payment of between 10% and 50% of the increase in the value of the site as a result of the planning permission (with access), allowing for reasonable costs to obtain planning permission. The percentage agreed depends on the individual facts of each case and the negotiating strengths of the parties, but where an access of some sort already exists one third of the uplift in land value is usually agreed.

There is an existing access to the site for its current use therefore the council is seeking a payment of at least 33% of the uplift in land value of the developer's site.

Accordingly, the minimum payment required to the council is as follows:

Freehold market value of the site with access and planning permission	£500,000
Existing use value, as a nursery	£30,000
Cost to obtain planning permission	£20,000
Net increase in site value as a result of access and planning permission	£450,000
Payment to IWC, at 33% of the uplift in land value	£148,500

Therefore, to receive best value, the council should receive a payment/value of at least £148,500.

9. The offer proposed by the developer in return for the grant of the right of way totals £220,000 (based on today's values), has been approved as best value by two independent Chartered Surveyors and is comprised as follows:
 - (i) £25,000 payment on the signing of the agreement, plus

- (ii) 7.5% of the gross sale proceeds of each completed dwelling following full and proper marketing of each unit, subject to an additional minimum payment to the council of £170,000 for all eight properties. Relatively conservative values have been assumed to calculate this figure and if sale values are higher the council will receive a higher payment. If sales values are lower, however, the council will still receive a minimum of £170,000. If more than eight dwellings are granted planning permission the council will also share in the additional value created by way of additional percentage payments to the council for the additional unit(s). Plus
 - (iii) a proportion of the value of the new road because the provision of a new pavement will be directly beneficial to the council as one does not exist currently. The cost of the pavement has been estimated internally at c. £25,000.
- 10. In addition to the financial payment noted above, the reconstruction of the road will result in revenue savings for the education department by reducing the cost of future road maintenance. A plan showing the proposed road improvement works is attached as Appendix 3.
- 11. The school has also requested that eight parking spaces currently provided on the access road be re-provided on the school site (cost estimated to be c. £15,000). This area is shown on the site plan attached as appendix 4, edged red.
- 12. In summary, therefore, the council is proposing to grant a legal right of way across the access road to St George's School, in exchange for value to the council of at least £220,000, a newly constructed and improved access road to the school and a new school car park.
- 13. The financial payment only to the council (£195,000: £25,000 on the signing of the agreement plus a minimum of £170,000 within two years) represents 43% of the uplift in land value, whilst the total value of this offer (the financial payment noted above plus the £25,000 value attributable to the new pavement) represents 49% of the uplift in land value. Both exceed the 33% payment deemed as reasonable for a right of access under the Stokes vs Cambridge case law.
- 14. To safeguard the interests of the council a long stop date for the payment has been agreed of two years from the date of grant of planning permission to cover the eventuality that the developer does not build/sell the properties. This states that if, within this timescale, any or all of the properties have not been sold each would be valued by agreement, or failing such agreement by reference to an independent valuer, and the payment made.
- 15. Whilst the requirement for a new access road will, it is understood, be imposed by any planning permission, it will also be a condition of the deed of grant (of access) that the new road is provided by the developer.
- 16. The council will ensure that the programming of the road construction works is undertaken by agreement with the head teacher of St George's School, so that the operation of the school is not adversely affected.

17. Timescales and long stop dates for the construction of the road have been agreed as follows:
- With the exception of the wearing course, the road must be complete before commencement of the residential development.
 - Once the road works have commenced, they must be completed within three months, or by agreement with the school head teacher.
 - If the road works are not commenced within two years of the signing of the deed, the agreement can fall away at the request of the council.
 - On commencement of the road works, a bond for the full value of the works will be lodged with the council so that, in the event that the road works are abandoned, the road can be completed at no cost to the council.

STRATEGIC CONTEXT

18. The maximising of value associated with the council's assets forms part of the 'delivering of budget savings through change service provision' key corporate priority within the council's corporate plan.
19. The capital receipt received as a result of this proposal will be reinvested in the schools reorganisation programme. Raising educational standards (previously known as the schools reorganisation programme) is also one of the council's key corporate priorities within the corporate plan.
20. The proposals also contribute towards the council's key corporate priorities housing and homelessness, through the developer's provision of housing, and regeneration and the economy, with the improvement of the school drive.

CONSULTATION

21. Details of the proposal have been shared with the cabinet member for the economy and the environment, the cabinet member for children's services and education, the local member and Newport parish council. No adverse response has been received by the Strategic Assets Team, although the Planning case officer has received an objection from Newport Parish Council regarding the design of the proposed development (the Parish Council appears to accept the principle of redevelopment of the site to eight dwellings, but objects to the current design). The details of the proposal have also been shared with the head teacher of St George's School and the school governors as well as the head teacher of Clatterford Tuition Centre, and no adverse response has been received.

FINANCIAL / BUDGET IMPLICATIONS

22. The access road has not historically generated a revenue stream, therefore there is no loss of income to the council as a result of this proposal.
23. The developer will rebuild the access road at his own cost, so there is no capital cost implications to the council as a result of this proposal.
24. The education department is responsible for any maintenance to the access road. Once the road has been rebuilt the quality of the road will be greatly improved, therefore future maintenance (revenue) costs for the education department will be reduced.

25. If the recommendation in this report is adopted, the council will benefit from a capital receipt/investment into the schools reorganisation programme of at least £220,000 over two years (at today's values).

CARBON EMISSIONS

26. There is no direct carbon emission implication for the council as a result of the grant of this right of way, as the access road is simply being reconstructed. There will, however, be an indirect increase in carbon emissions on the Island as a result, as the developer will then be able to build eight residential dwellings.

LEGAL IMPLICATIONS

27. The council currently owns the access on a freehold basis with unencumbered title.
28. If the right of way is granted, freehold interest of the access way will remain with the council – the freehold interest of the land will not transfer to the developer as part of this proposal.
29. As 7.5% of the value of each property built/sold will be paid to the council, if more than the eight units currently proposed are granted planning permission the council will also benefit from the additional units created through an increased percentage received.
30. The Council is empowered under the Local Government Act 1972 to dispose of its assets which includes granting easements over Council owned land.

EQUALITY AND DIVERSITY

31. The council as a public body is subject to general and specific duties under The Equality Act 2010 to assess the impact of its decisions on the nine 'protected' characteristics (race, gender reassignment, disability, age, sex and sexual orientation, religion or belief, pregnancy or maternity, marriage and civil partnership).
32. Where the council is providing new or extended facilities at a school under the school reorganisation programme, every opportunity will be taken to improve access to the premises (cabinet paper 22/11.) The proposals above will result in a greatly improved access to St George's School, which currently has an inadequate access road.

PROPERTY IMPLICATIONS

33. It is considered that property implications are adequately covered within the main body of this report.

OPTIONS

34. Options have been considered in respect of this property as follows:
- (a) To grant the right of way on the terms detailed in this report.

- (b) To continue to negotiate with the developer in the hope of achieving a higher capital receipt/more advantageous terms for the council.
- (c) Not to grant the right of way.

RISK MANAGEMENT

- 35. Option (a) represents low risk to the council as the developer already owns the nursery site and is keen to develop it, and the above proposal is the obvious solution to provide access to the nursery site, so is likely to deliver on the agreed terms.
- 36. Option (a) also represents low risk to the council as the terms have been negotiated by an independent surveyor, and signed off by a second independent valuer to ensure best value is achieved by the council.
- 37. Under Option (a), if the developer withdraws the council is left with funding the cost of officer time and the advice of one independent valuer only, as all other costs are to be met by the developer.
- 38. Option (b) would be of relatively high risk as the developer may well withdraw his offer. The council can prove it has negotiated best value, receiving in excess of the value deemed reasonable under Stokes vs. Cambridge case law, and to try and achieve more would be seen to be unreasonable. There may be an alternative site access which the developer could consider if the price with the council reaches a critical level, such as purchasing an adjacent property which could also provide access to the adopted highway.
- 39. Option (c) is high risk as the developers offer would be withdrawn. The council would then lose minimum value of £220,000, a newly constructed school access road which greatly improves the current access, and future road maintenance savings for the council's education department.

EVALUATION

- 40. Option (c) is not recommended as it fails to achieve a capital receipt, and would result in the loss of a greatly improved school access and future road maintenance cost savings.
- 41. Option (b) is not recommended because the council and its independent advisors are satisfied that the current offer provides the council with best value, and that to seek additional value or benefit from this offer would be considered unreasonable. The developer may then withdraw his offer.
- 42. Accordingly, it is considered that option (a) is the most appropriate way forward.

RECOMMENDATION

43. That the council adopts option (a):
To grant the right of way on the terms detailed in this report.

APPENDICES ATTACHED

44. [Appendix 1](#) – site plan
45. [Appendix 2](#) – developer’s proposals
46. [Appendix 3](#) – proposed road improvements
47. [Appendix 4](#) – proposed new car park

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CLLR GEORGE BROWN
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Decision
Signed
Date
