

Report to the Council Housebuilding Cabinet Committee



Report reference: CHB-006-2020/21
Date of meeting: 08 September 2020

**Epping Forest
District Council**

Portfolio: Housing and Community Services – Councillor H Whitbread

Subject: Policy for Licencing and Grant of Permanent Rights of Way/Access for the Council Housebuilding Programme

Responsible Officer: Deborah Fenton
Service Manager – Housing Management and Home Ownership (01992 564221)

Democratic Services: J Leither (01992 564756)

Recommendations/Decisions Required:

- (1) To adopt a new policy for Licencing and Grant of Permanent Rights of Way/Access for the Council House Building Programme.**
- (2) To carry out audit and review of the current licencing arrangements and fees charged.**
- (3) To create and maintain a central database and notification system for issued licences, and sale agreements for permanent rights of way/accesses.**
- (4) To carry out annual monitoring and review of licences, and regular site inspections to regulate and prevent the creation of unauthorised rights of way/access.**

Executive Summary:

This report recommends the adoption of a new policy for the licensing and granting of rights of way/accesses relating to the Council House Building Programme (CHBP).

The policy is required to prevent the creation of unauthorised rights of way/accesses across Council land which has led to legal proprietors acquiring an easement either by prescription or quasi easement. This has led to the requirement for the Council to compensate proprietors whose rights of way/accesses are permanently or temporarily closed on development sites under CHBP.

A review of the current licensing system is recommended to agree a new form of Licence for Rights of Way/Access. This review will also consider the level of the annual licence fee to ensure it reflects a financially realistic relationship to the permanent sale price of the Right of Way/Access in order that the licence fee value is reflective of the value and consistently applied.

The creation of a central data base is recommended which records issued licences and sale agreements for permanent Rights of Way/Access including a notification process for all relevant Council departments/teams.

Going forward a system for the annual monitoring and review of licences as well as regular site inspections to regulate and prevent the creation of unauthorised rights of way/accesses.

Reasons for Proposed Decision:

To prevent the creation of unauthorised rights of way/accesses and to formalise the process for managing the issuing of licences and permanent rights of way/access going forward.

Other Options for Action:

Not to implement the new policy. This will perpetuate the unauthorised creation of rights of way/accesses to the financial and reputational detriment of the Council.

Report:

1. A number of CHBP sites have been 'appropriated' (under Section 122 of the Local Government Act 1972) in order to facilitate the change of Planning use, requiring existing Rights of Way/Access to be overridden/extinguished and compensation paid. Some households adjoining these sites have constructed unauthorised vehicles and pedestrian accesses, which over time has created legal rights of way.

2. Given these circumstances, there is a clear need to establish a manageable policy whereby residents are able to acquire rights of way, either by licence or purchase, to facilitate their ability to access their properties and/or park vehicles off the highway and at the same time prevent unauthorised rights of way. Therefore, a new policy is proposed, and this is set out in the appendix to this report.

3. Where a legal proprietor has acquired an easement either by prescription or quasi easement, EFDC has the legal right under Section 203 of the Housing and Planning Act 2016 (HPA 2016) to permanently extinguish and terminated these rights subject to the payment of appropriate compensation utilising the appropriation powers Section 204 HPA 2016.

4. The purpose of the proposed policy is to provide a framework and guidance for the control of Rights of Way/Access to parties other than the new residents of the CHBP developments. Many of the CHBP developments are secluded internal schemes with low levels of supervision. Therefore, it is desirable to control potential access in order to prevent and discourage the potential for future anti-social behaviour.

5. It is recommended that the current 'licence to cross' is reviewed by all interested parties to agree a new form of Licence for Rights of Way/Access to be adopted which should include and be accompanied with a licence plan describing the precise route and extent of the rights being granted and detailing the fees/costs and maintenance contribution of such.

6. The proposed policy sets the level of the annual licence fee will reflect a financially realistic relationship to the permanent sale price of the Right of Way/Access in order that the licence fee value is reflective of the value and consistently applied.

7. The sale of a permanent right of way/access to a private property owner will be determined to ensure the best consideration is achieved in accordance with Section 123 of the Local Government Act 1972. Therefore, it will be necessary to obtain a RICS Valuation to establish the sale price the cost of which is borne equally by both parties, but the instruction is to be made jointly by EFDC.

8. The creation of a central data base is recommended which records issued licences and sale agreements for permanent Rights of Way/Access including a notification process whereby when a licence is being considered for grant or sale (of a permanent right of way/access). This information should be circulated and both the Housing Development and Legal Teams for consultation in a not dissimilar way as potential Right to Buy disposals are being considered and subsequent notification issued across Council departments/teams.

9. Annual monitoring, review and updating of the Policy is recommended.

Resource Implications:

None.

Legal and Governance Implications:

Appropriation of Land by Principal Councils - Section 122 of the Local Government Act 1972.

Power to override easements and pay compensation – Sections 203/204 The Housing and Planning Act 2016.

When disposing of a permanent right of way/access - Section 123 of the Local Government Act 1972.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

None,

Background Papers:

Draft Policy for Licencing and Grant of Permanent Rights of Way/Access for the Council House Building Programme

Risk Management:

The proposed policy needs to be rigorously and consistently implemented to mitigate further financial loss due to the creation of unauthorised rights of way/access.

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an Appendix to this report.