



Epping Forest District Council

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

DRAFT

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1. Background/Scope

- 1.1. As part of the Council House Building Programme (CHBP) a number of sites were 'appropriated' (under Section 122 of the Local Government Act 1972) in order to facilitate the change of Planning use, which as a consequence required any existing Rights of Way/Access to be overridden/extinguished and compensation paid (as required under the Housing and Planning Act 2016).
- 1.2. During this process it has become evident that some households adjoining these CHBP sites had constructed unauthorised accesses for vehicles and pedestrian gates which over time has created legal rights of way. As these remained unchallenged for a period of 20 years these Rights of Way/Access became secured by 'prescription'. In addition, some residents have exercised their Right to Buy and have gained 'quasi easements'. Because these have not been robustly policed the problems were not addressed prior to exercising their RtB.
- 1.3. As part of the compensation process formal RICS valuations were obtained to establish the level of compensation payable. This highlighted that, in general terms, the compensation payment for the permanent extinguishment for a pedestrian access is c£5,000 i.e. c.1.5% of the properties OMV and the compensation payment for the loss of a vehicle access ranges between c.£16,000 for a car park space to c.£40,000 for a well-built garage i.e. c10% of the properties OMV.
- 1.4. 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.

2. Policy Statement

- 2.1. 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.
- 2.2. Where a legal proprietor has not acquired the appropriate rights but may simply wish to acquire a right of way/access; then EFDC requires a licence or sales agreement to be entered into which will include the requirement to contribute towards the ongoing cost of repairs and maintenance of the access way.
- 2.3. To ensure that rights of way/accesses remain controlled, EFDC will carry out regular site inspections (at least annually) across all of the Council's Housing Estate to ensure no further unauthorised rights of way/accesses become prescriptive rights and these inspections will form part of the annual Licence renewal review.
- 2.4. The purpose of this 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. They are predominately private courtyards and not public highways. Therefore, it is desirable to control potential access in order to prevent and discourage the potential for future anti-social behaviour. The more people who have

a legitimate reason to access these areas, the better as it will improve security and community safety.

- 2.5. This policy sets out the basis for the future licencing or permanent sale of Rights of Way/Access in so far as they relate to the CHBP to ensure a fair outcome for all parties.

3. Statutory Framework:

The following legislation and guidance provide the statutory framework for the appropriation of land and overriding/extinguishment of easements and other rights by principal Councils and set out the duties of the Council in providing compensation where rights are extinguished.

- 3.1. Appropriation of Land by Principal Councils - Section 122 of the Local Government Act 1972.
- 3.2. Power to override easements and pay compensation – Sections 203/204 The Housing and Planning Act 2016.
- 3.3. When disposing of a permanent right of way/access - Section 123 of the Local Government Act 1972.

4. Licencing and Grant of Permanent Rights of Way/Access:

- 4.1. To avoid a repeat and prevent the unauthorised creation of access points and rights of way/access which results in un-necessary financial burden falling on the Council and avoid the associated reputational damage it is necessary to ensure there is a more robust policy and process in place.
- 4.2. There is a broad collective responsibility involving several departments/teams that affects the quality of the current standard of Record Keeping. Currently there is a standardised form of Licence used for 'rights to cross' but the associated fee varies; the reason for which is not always apparent or understood.
- 4.3. 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.
- 4.4. There is a benefit in creating a central data base record of issued licence's 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.
- 4.5. 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. Therefore, consideration will be given

to the status of the property and the benefits of the rights granted. For example, if it is in private ownership the property's value will increase to some degree if the right is permanently granted. However, this may not be the case if it is a licence as 1) a license can be revoked; 2) there is no obligation or guaranteed granted or renewed; 3) a licence is personal contractual right as opposed to a proprietary right. Therefore, these differences need to be reflected in the licence fee charged.

4.6. Therefore, it should be recognised that when selling a permanent right of way/access to a private property owner that the best consideration is achieved in accordance with Section 123 of the Local Government Act 1972. Therefore, it will be necessary to obtain an 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.

4.7. An audit will be carried out of all existing licences to review the level of charges and form of licences issued across the District. This is with the aim of rationalising the basis on which licences are issued and fees charged to create a consistent approach.

5. Reviewing the Policy:

5.1. The District Council will monitor, review and update the Policy annually.

1. Version control log

Version no.	Date	Details of changes included in update	Author
1		Publication	