

Key Decision Required:	Yes	In the Forward Plan:	Yes
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CABINET

18 APRIL 2012

REPORT OF FINANCE AND ASSET MANAGEMENT PORTFOLIO HOLDER

A.4 PREVENTION OF ENCROACHMENT

(Report prepared by Andy White)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To inform members of measures taken to minimise the risk of encroachment onto land owned by the Council.

EXECUTIVE SUMMARY

On 25 January 2012 Cabinet considered reports dealing with the regularisation of boundaries following encroachment by developers. Although members identified the encroachment at an early stage, officers were not able to establish clear evidence to resolve the matter until buyers of adjoining houses sought to register their properties. This affected the Council's ability to reclaim the land rather than agreeing an exchange and compensatory payment. Cabinet requested a report dealing with a protocol to ensure that this situation is not repeated.

RECOMMENDATION(S)

That Cabinet notes the measures put in place to minimise the risk of future loss of land.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Council's assets contribute in various ways to all of the priorities identified in the Corporate Plan. The safeguarding of those assets therefore has the potential to contribute across the range of the Council's activities.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Safeguarding of Council assets is one important aspect of the prudent management of the Council's resources.

Risk

The Council owns 739 general fund properties covering nearly 575 Hectares in addition to all of the HRA dwellings and other property. This extent of landholding makes it inevitable that there will be acts of encroachment from time to time. This report deals with the precautions and procedures that the Council has implemented to deal with these acts in order to minimise the risk of the loss of land.

LEGAL

Although every case must be taken on its facts there are some general principles that can be considered in the context of this report.

Adverse possession:

In principle the occupation of land does not cause the ownership to change, although after 12 years the owner may no longer be able to legally challenge that occupation because of the effect of the statute of limitations. At this stage a person encroaching on land can apply to register ownership. There are detailed rules covering standards of evidence, notices, opposition and grades of title that should always be subject to legal advice on a case by case basis.

Rights of access:

Rights of access over land can be acquired in a similar way if a clearly defined route is used over a period of 20 years. In most cases rights acquired in this way are not documented unless there is a dispute.

In both of these cases an owner can argue against the transfer of land or rights by showing that the use is either by consent or concealment. Land owners have a right to enter their own land and to take reasonable steps to remove intruders, including reasonable force. However it can easily be seen how such actions can quickly escalate into dispute so it is always better to proceed by way of a court order rather than by direct action if land is to be reclaimed.

As above specific legal advice on any case should always be sought.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following: Crime and Disorder/Equality and Diversity/Health Inequalities/Consultation /Public Engagement.

All of these implications could be relevant to individual Council properties.

Wards

All

PART 3 – SUPPORTING INFORMATION

BACKGROUND

This report was requested following Cabinet’s consideration of reports dealing with the regularisation of encroachment at The Hangings in Dovercourt. In that case the Council was well within the period within which it could have sought a court order for the land to be returned but uncertainty over the correct position of the boundary had lead to developers erecting fences in the wrong location even after discussion and site meeting with officers. In these circumstances a negotiated solution was recommended because of the costs and risks of litigation coupled with the relatively small impact on the open space compared with the significant impact on owners who had purchased dwellings on the development. Some exchange land and a significant sum of money was proposed and, on balance was the appropriate course in that case. Cabinet agreed to accept the proposed resolution, subject to the additional resolution:

“(c) That Officers bring forward a report to a future meeting to ensure a Protocol is in place to ensure that this situation is not repeated.”

CURRENT POSITION

In general, like any major land owner, the fact and extent of the Council's ownership has been open to challenge historically and on an ongoing basis. There are four main factors that lead to this:

1. Uncertainty and discrepancy in the way that property was allocated between the three tiers of local government in the 1974 reorganisation.
2. Complexity or uncertainty over the extents of land shown on historic documents.
3. Mistake in the granting of rights or drafting of documents.
4. Neighbouring owners taking over land: sometimes in secret, sometimes openly; sometimes knowingly, sometimes by accident.

As with most difficult situations issues rarely arise as a result of just one factor, usually a combination of two or more. The Council has already adopted a number of measures to control risks:

- Voluntary registration of all of the Council's land was completed in 2010. This has the benefit of transferring plans and data from historic document into modern forms, triggers additional procedures if another person seeks to register an overlapping area, and deals with some of the historic discrepancies.
- The stocktake of all of the Councils assets includes the formation of a comprehensive list of all of the Council's General Fund land, reconciled with departmental and other lists and each area identified and paired with a department for management purposes.
- The creation of a central property database within Uniform, the Council's corporate GIS system allowing access for identified staff in all departments to detailed data and plans of all of the Council's properties.
- Linking of the Idox database with the Council's intranet to allow all staff to access plans that show the Council's ownership via Local View.
- Bringing together the Council's Legal, property, IT and audit functions within Resource Management to form a robust pool of knowledge that can be accessed by all departments.

Despite this work, partly because of it, there are a small number of ownership issues that are yet to be resolved some examples are set out in Appendix A.

In addition to the measures outlined above it is proposed that:

- Work on producing a Property, Policy and Practice document is completed including guidance on the management of property and the referral of disputes to the Assets Manager.
- Reinforcing processes that highlight when planning applications include land that is owned by the Council.
- The examples above are considered by officers and appropriate reports brought forward to consider proposals to resolve the issues.

BACKGROUND PAPERS FOR THE DECISION

None.

APPENDICES

Appendix A:

Schedule of current example cases.

Brightlingsea: Spring Lane Substation, where the Council receives rent from the undertaker but does not hold paper title to the site.

Brightlingsea: Promenade Way Café, where the Town Council lease the building to a tenant but TDCholds the paper title.

Brightlingsea: Open space at Promenade Way, where the boundaries between District Council and Town Council paper titles do not correspond with the features on site.

Elmstead Market: Clacton Road, where the Council owns a section of verge that seems to be used as access and part of a private site.

Jaywick: Some of the plots are not subject to current agreements with neighbouring occupiers, rent levels at others have not been reviewed recently.

Clacton: Martello Bay, where the owner of the Beach Café uses access and parking as well as storage on land owned by the Council.

Walton: Orlando Court, where an industrial owner keeps a storage container partly on land owned by the Council.

Walton: Sunny Point, where a number of dwellings use the Council's land for access but only some of them do so by agreement

Dovercourt: The Hangings, where another developer has left land adjoining the Council's unenclosed: effectively adding to the area under the Council's maintenance.

Dovercourt: North of the relief Road, where an unused area of council land cut off by the new road adjacent to a disused pumping station is used by unauthorised members of the public.

Harwich: Old School Hall Wellington Road, where registration has revealed ownership of a property not previously included in any of the Council's records.

Harwich: Boundary walls at the rear of Mayflower house not erected on the legal boundary leaving land to be used by neighbours.

Generally: Areas of open space and car parks sometimes have rear accesses and side gates from neighbouring properties, sometimes by agreement, sometimes not