

East Herts Council Non-Key Decision Report

Date: 1 February 2022

Report by: Councillor Geoffrey Williamson – Executive Member for Financial Sustainability

Report title: Proposed sale of land adjoining 42 Cherry Tree Green, Hertford

Ward(s) affected: Hertford Sele

Summary

- The owner of 42 Cherry Tree Green has expressed an interest in purchasing a strip of land adjacent to their property. Following negotiations, terms have been provisionally agreed, subject to formal consent, for the sale of the land for the sum of £100,000 plus costs.

RECOMMENDATIONS FOR DECISION:

A. That the parcel of land measuring 385 m² and shown outlined in red on the plan in Appendix A, be sold to the adjacent owner of 42 Cherry Tree Green for the sum of £100,000 plus the Council's reasonable costs.

1.0 Proposal(s)

1.1 That a strip of land adjacent to 42 Cherry Tree Green be sold to the freehold owner of 42 Cherry Tree Green.

2.0 Background

2.1 The Council owns a piece of land (unregistered) between 42 Cherry Tree Green and the Thieves Lane public footpath

leading from Cherry Tree Green to Bramfield Road (**Appendix B** – Leasehold Title HD184181)

- 2.2 The Council also own a tree belt parallel to Bramfield Road and the properties at 2- 42 Cherry Tree Green (**Appendix C** – Title HD498388)
- 2.3 The land edged red in **Appendix B** of approximately 329 m² was leased to the former owner of 42 Cherry Tree Green for use as garden land only for a term of 99 years expiring in 2083. This lease has not been formerly assigned to the current owner although the Land Registry have transferred the leasehold title to them (unlawfully – see legal comments). A consideration of £2,850 was paid to the Council for the benefit of this lease in 1984 and the annual rent is five pence (if demanded).
- 2.4 The area shaded pink of approximately 56 m² within the red outline on the plan (**Appendix A**) was previously held under licence personal to former owners of 42 Cherry Tree Green for use as garden land only. Its use by the current owner needs to be formally documented either by licence, lease or freehold sale.
- 2.5 The land offers no potential for the Council to either use for its own purposes or to develop as a separate site.
- 2.6 There are a number of Tree Preservation Orders (TPO's) on the land (**Appendices D and E**).
- 2.7 Photographs of the plot are attached at **Appendix F**.

3.0 Reason(s)

- 3.1 The plot does not easily lend itself to standalone residential development and is unlikely that planning permission would be granted due to size, location and the presence of a number

of TPO's on the land.

- 3.2 The TPO's have a big impact on the value of the land and another purchaser may consider the value should be heavily discounted to reflect that the land is only capable of being used as garden land unless planning permission can be sought to remove some of the TPO's which may allow a small extension to the existing development only.

4.0 Options

- 4.1 Agree to an unencumbered freehold sale of the land on the terms agreed.
- 4.2 Refuse a sale of the freehold and allow the transfer of the 1984 Lease to stand (see legal comments) together with a new lease/licence of the 56 m² small parcel.
- 4.3 Negotiate a new lease for both areas of land restricted to garden use only at a rent of approximately £480 p.a. The low rent figure reflects the limited scope of the land, the cost of maintaining the land and trees and that there is unlikely to be any interest for the land from the wider market.

5.0 Risks

- 5.1 If a sale, assignment (transfer of existing lease) or new lease does not proceed the Council will have the cost of management of the trees and land of the smaller plot now and of the larger plot in 60 years when the lease expires (if the transfer of lease is accepted) or now if either part of the land is returned to the Council.

6.0 Implications/Consultations

- 6.1 No

Community Safety

No

Data Protection

No

Equalities

No

Environmental Sustainability

No

Financial

Yes

1. If a sale of the freehold is agreed the Council will receive a capital payment of £100,000 for the land plus the Council's reasonable costs and will have no future liabilities.
2. If the transfer of the existing lease to the new owners of 42 Cherry Tree Green is accepted (see legal comments) there will be no financial implications to the Council beyond recovering legal and surveyors' costs.
3. If a new lease is granted rather than a sale the Council will receive a small annual rent.
4. For both options 2 and 3 the Council may incur maintenance costs in the future.

Health and Safety

No

Human Resources

No

Human Rights

No

Legal

1. The leasehold title HD184181 has been unlawfully transferred to the current occupiers of 42 Cherry Tree Green by Land Registry without consulting EHDC as freehold owners. If a freehold disposal to the adjoining owner does not go ahead, they will still hold the leasehold interest, albeit without our formal consent. The Council could challenge Land Registry, however the transfer does mean that the previous owners have surrendered their interest in the title and it is unlikely that we would have had reasonable grounds to object to a formal assignment of the lease.
2. The Council's freehold title (in respect of the leasehold title HD184181) is not registered, and the lease has been demised from the unregistered conveyance dated 1 February 1928. The 56m² small parcel is part of the Council's freehold title HD498388 which is amenity land, and both titles would be a disposal under s123 LGA 1972. Unless the land is considered "open space" it will not need to be advertised.
3. Disposal under s.123 LGA 1972 places the Council under a statutory duty to sell land at the best price reasonably obtainable. The General Disposal Consent (England) 2003 permits disposal of property for less than best consideration if it is likely to contribute to the promotion or improvement of the economic wellbeing of the community, provided the undervalue is less than £2million. The land may cause management or financial issues for the Council if costly to maintain.
4. If the land offers no significant protection or enhancement and is considered surplus or under used this would justify sale by private treaty where the adjoining owner is the only prospective purchaser. We will need to ensure there are no rights of way over the area tinted pink in the plan (**Appendix A**).

5. A purchaser of local authority land is provided with some protection. If the local authority holds itself out as disposing of land, the disposal will still be valid even if the requisite consent has not been obtained or any requirement to advertise the disposal is not complied with. There is no requirement that a person dealing with a local authority should ask for evidence that the consent has been given ([section 128\(2\)\(a\) and \(b\), LGA 1972](#)).

Specific Wards

Hertford Sele

7.0 Background papers, appendices and other relevant material

7.1 **Appendix A** – Plan of subject land outlined in red

7.2 **Appendix B** - Leasehold title plan HD184181

7.3 **Appendix C** – Freehold title plan HD498388

7.4 **Appendix D** – Location of TPO's edged green

7.5 **Appendix E** – List of TPO's on subject land

7.6 **Appendix F** - Photographs

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