



**Disposal of Highway Land at  
1 Ravens Close & 1 Toldene Close,  
Knaphill, Woking**

**23 JULY 2003**

**KEY ISSUE:**

To consider declaring as surplus parts of two areas of public highway verge and to extinguish the public right to pass and re-pass over them.

**SUMMARY:**

Occasionally Surrey County Council receives requests from residents' about purchasing areas of public land for private use. The land usually exists as public highway and the County Council as the Highway Authority assesses the feasibility of extinguishing public rights over these parcels of land.

In both these instances having concluded the assessments it is deemed feasible to declare the hatched areas of land shown on plans 11533 and 11534A unnecessary for highway purposes and therefore surplus to highway requirements.

The public highway right to pass and re-pass over these parcels of land will be extinguished before the landowner can re-enter the land and use

it unencumbered. In both instances, the residents have agreed provisional terms with the landowner (not the County Council) to purchase the land once public highway rights are extinguished. The process of removing public highway rights is open to public challenge and determination in the Magistrates' Court.

Removing public highway rights does not automatically enable the owner to build or enclose the land. The owner will firstly need to comply with statutory planning regulations and or any other statutory consent and or covenant placed on the land.

### **CONSULTATIONS:**

The Divisional Member is aware of the contents of this report.

Woking Borough Council Ward Councillors received notification of this report.

### **OFFICER RECOMMENDATIONS:**

The Committee is asked to agree

- (i) **that the hatched area shown on plan number 11533 be declared unnecessary and surplus to highway requirements;**
- (ii) **that subject to safeguarding the existing tree, the hatched area shown on plan number 11534A be declared unnecessary and surplus to highway requirements; and**
- (iii) **that Legal Services be instructed to proceed with the extinguishment of public highway rights over the hatched areas shown on plan numbers 11533 and 11534A.**

## **INTRODUCTION and BACKGROUND**

1. Mr Everard of 1 Ravens Close, Knaphill initially approached Woking Borough Council in November 2001 about the possibility of purchasing some land adjacent to his property in Ravens Close.
2. Mrs Emery of 1 Tolldene Close initially approached Woking Borough Council in March 2002, about the possibility of purchasing some land adjacent to her property in Tolldene Close.
3. When Mr Everard and Mrs Emery made their enquiries Woking Borough Council was Agent for the Highway Authority. With the Highway Authority's approval, an Agent might consider this type of enquiry.
4. Mr Everard and Mrs Emery both received a plan indicating the extent of a parcel of land, which the Highway Authority might consider releasing from public highway subject to a full assessment, and confirmation that they would meet the associated costs.
5. Mr Everard and Mrs Emery both confirmed their interest in the parcel of land shown on their respective plans and accepted to meet the costs associated with their purchase request.
6. Woking Borough Council's Legal Services received instructions to proceed with Mr Everard's request for a potential extinguishment of highway rights in February 2002. They did not receive a similar instruction connected with Mrs Emery's request.
7. The Highway Agency agreement with Woking Borough Council terminated on 31 March 2002. Woking Borough Council's Legal Services referred all their incomplete instructions to the County Council's Legal Services on the termination of the agency.
8. The County Council's internal procedures for dealing with land purchase requests also changed after 31 March 2002. The Local Committee together with the Local Transportation Service – Woking, became responsible for processing land purchase requests within the Woking local area. Therefore, the Local Committee is responsible for making a declaration with respect to whether public highway land is or is not unnecessary and surplus to highway requirements, and for initiating the associated legal process to extinguish (stopping up) the public's right to pass and re-pass over the land.
9. The County Council's Legal Services generally use Section 116 of the Highways Act 1980, for removing public highway rights over highway land declared unnecessary and surplus to highway requirements. An application for an Order under Section 116 is made by means of a complaint to the Magistrates' Court.
10. Notice of the County Council's intention to apply for an Order must be given in advance to the Borough Council, be placed in local newspapers and posted on site, be distributed to adjoining landowners or occupiers and be sent to the

Statutory Undertakers. The notices must specify the time and place at which the application is to be made, the terms of the proposed Order and must include a plan showing the effect of the Order.

11. At the hearing of the application for an Order, all recipients of the notices, any person who uses the highway, and any person aggrieved by the making of the Order have a right to be heard. If it appears to the Magistrates' that the highway is unnecessary for public use, they may confirm the Order.
12. The confirmation of an Order extinguishing public highway rights allows the landowner to re-enter the land and use it unencumbered. However, the removal of public highway rights does not automatically entitle the landowner to build or enclose the land without first complying with statutory planning regulations and or any other statutory consent and or covenant placed on the land.

## **ANALYSIS AND COMMENTARY**

### **1 Ravens Close, Knaphill**

13. The land under consideration is adjacent to the southern boundary of 1 Ravens Close; it comprises an area of approximately 76m<sup>2</sup> and is situated on the northwest corner of the junction of Ravens Close and Larks Way, in the Birds Estate Knaphill. It forms part of a larger area of grassed highway verge of approximately 172m<sup>2</sup>.
14. Situated within this area of highway verge is one established highway tree a purple plum (girth 1.15m). The tree is in good health and together with other similar trees situated along Larks Way contributes to the overall environmental quality of the street scene.
15. An assessment of the visibility available within existing public highway limits for vehicles entering and leaving the junction of Ravens Close and Larks Way, established that some of the existing highway verge is not required for this purpose. Therefore, it is possible to identify a parcel of public highway land, which might be considered unnecessary for highway purposes; this is shown hatched on plan 11534A. The parcel of land also contains the highway tree referred to in paragraph 14 above.
16. It is unusual for the Highway Authority to remove a highway tree unless it constitutes a highway danger and or is dead or diseased. The Highway Authority also aims to provide replacements for felled trees. With highway rights extinguished over the parcel of land in question, the tree's future maintenance and care would be in private control. A Tree Preservation Order and or a covenant with the land would safeguard the long-term future of the tree.
17. The usual Statutory Undertakers were approached to enquire whether they had any plant and or equipment located within the parcel of land under consideration. The replies received indicate the area is free of Statutory Undertakers plant and equipment.

18. The County Council does not own the sub-soil rights of the parcel of land under consideration and therefore cannot sell the land to Mr Everard. Mr Everard has informed the County Council that the owner of the sub-soil is willing to sell him the land when public highway rights are extinguished. At the time this report was prepared Mr Everard had not provided documentary evidence to support this statement. Mr Everard will be required to evidence his declaration with respect to the sale of the land.

### **1 Toldene Close, Knaphill**

19. The land under consideration is adjacent to the southern boundary of 1 Toldene Close; it comprises an area of approximately 43m<sup>2</sup> and is situated on the northwest corner of the junction of Toldene Close and Robin Hood Road, in Knaphill. It forms part of a larger area of grassed and planted highway verge of approximately 155m<sup>2</sup>.
20. Planted within this area of highway verge are an established laurel hedge along the boundary fence and three established highway trees, two cherry trees (girth 0.8m and 0.75m) and one ash (girth 0.4m). The trees and hedge are in good health and contribute to the overall environmental quality of the street scene.
21. An assessment of the visibility available within existing public highway limits for vehicles entering and leaving the junction of Toldene Close and Robin Hood Road, established that some of the existing highway verge is not required for this purpose. Therefore, it is possible to identify a parcel of public highway land, which might be considered unnecessary for highway purposes; this is shown hatched on plan 11533. The parcel of land excludes the highway trees but includes part of the laurel hedge referred to in paragraph 20 above.
22. The usual Statutory Undertakers were approached to enquire whether they had any plant and or equipment located within the parcel of land under consideration. The replies received indicate the area is free of Statutory Undertakers plant and equipment.
23. The County Council does not own the sub-soil rights of the parcel of land under consideration and therefore cannot sell the land to Mrs Emery. Mrs Emery has informed the County Council that the owner of the sub-soil is willing to sell her the land when public highway rights are extinguished. Mrs Emery has also provided documentary evidence to support this statement.

### **FINANCIAL IMPLICATIONS**

24. Mr Everard and Mrs Emery both provided an initial payment of £400.00 to cover the County Council's preliminary investigation costs. Both parties are aware that they will be required to finance the County Council's costs whilst it progresses the extinguishment of highway rights through the Magistrates' Court. These costs are likely to be in the region of £2,000.00 providing there are no objections and or other legal difficulties.

## **SUSTAINABLE DEVELOPMENT IMPLICATIONS**

25. There are no sustainable development implications.

## **CRIME & DISORDER IMPLICATIONS**

26. There are no crime and disorder implications.

## **EQUALITIES IMPLICATIONS**

27. There are no equalities implications.

## **CONCLUSIONS AND REASONS FOR RECOMMENDATIONS**

28. In both instances having concluded the assessments it is deemed feasible to declare the hatched areas of land shown on plans 11533 and 11534A unnecessary for highway purposes and therefore surplus to highway requirements.
29. Special consideration is recommended to safeguard the long-term future of the existing highway tree at 1 Ravens Close. The introduction of a Tree Preservation Order and or covenant with the sale of the land is proposed.
30. Subject to both Mr Everard and Mrs Emery providing their appropriate financial contributions, and Mr Everard providing documentary evidence with respect to the sale of the land, the County Council's Legal Services could be instructed to progress the extinguishment of public highway rights over both parcels of land shown on plans 11533 and 11534A.

**Report by: Stephen Child, Local Transportation Director, Woking**

---

**LEAD/CONTACT OFFICER: Geoff Wallace**

**TELEPHONE NUMBER: 01483 518300**

**BACKGROUND PAPERS: none**

---

Version No. two Date: 14/07/03 Time: 09.30 Initials: GDW No of annexes: nil