

SURREY COUNTY COUNCIL

LOCAL COMMITTEE (EPSOM & EWELL)

DATE: 9TH DECEMBER 2013

LEAD OFFICER: NICK HEALEY, AREA TEAM MANAGER (NE)

SUBJECT: ABELEA GREEN BRIEFING NOTE

DIVISION: EPSOM TOWN AND DOWNS

**SUMMARY OF ISSUE:**

There is a dispute between the residents of St Margaret's Drive on the one hand, and on the other hand St Joseph's Church and St Joseph's School. The dispute centres on whether or not there is a right of access to St Joseph's School over the private road connecting St Margaret's Drive to the car park within the grounds of St Joseph's Church.

- 1.1 There is a private road connecting St Margaret's Drive to the car park within the grounds of St Joseph's Church. This private road is marked with a red dashed line on the plan below.



- 1.2 Abelea Green is privately owned. It is managed by the Abelea Green Management Company (Epsom) Ltd ("the Management Company").
- 1.3 St Margaret's Drive and Rosebank are both Public Highway.

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- 1.4 St Joseph's Church falls within the Arundel and Brighton Roman Catholic Diocese.
- 1.5 St Joseph's School is a Voluntary Aided school. As such St Joseph's School is a state-funded school and Surrey County Council owns the school site. The Diocese of Arundel and Brighton owns the buildings and has a substantial influence in the running of the school. The governing body ("the Governors") has foundation governors who are nominated by the Church as well as parent governors. The foundation governors have an absolute majority within the governing body. The school's staff are employed by the Governors but remunerated by Surrey County Council.
- 1.6 In 2004, by way of a deed of grant, the owner of Abelea Green granted private rights of access to the Diocese of Arundel and Brighton over the private access road namely: *"to pass and repass at all times and for all reasonable purposes in connection with the use of the said church and community hall as a church and community hall and ancillary purposes (but for no other purpose whatsoever)"*.
- 1.7 The view held by the residents of St Margaret's Drive, expressed through the Management Company, is that the deed of grant explicitly excludes access to the school grounds via the private access road in the phrase *"for no other purpose whatsoever"*.
- 1.8 The Governors of St Joseph's School consider that as the school serves the Parish's educational needs it is ancillary to the Parish. They also assert that in Canon Law the school is ancillary to the Parish. Therefore the view held by the Governors is that the school is arguably entitled to access under the terms of the easement in the phrase *"ancillary purposes"*. The Governors further assert that it would not in practice be possible to distinguish between those users of the private access road intending to visit the church and those users intending to visit the school; further still that users of the private access road may intend to visit church and school.
- 1.9 The School Travel Plans of March 2004 and September 2011 both observe that St Joseph's School *"is at the top of Rosebank, a cul-de-sac off West Street. The school is accessed via Rosebank and via St Margaret's Drive, off the Dorking Road, through the St Joseph's Church car park"*. In both documents there is reference to parents being encouraged to *"park in the 50 space church car park, accessed via St Margaret's Drive and not to drive up Rosebank"*.
- 1.10 Since the dispute over the right of access over the private access road has emerged, on the advice of Surrey County Council, St Joseph's School has amended the Travel Plan *"to remove any encouragement to parents to use the access road to obtain access to the School"*. This modification to the Travel Plan is notwithstanding the view held by the Governors outlined in paragraph 1.8.
- 1.11 In March 2013 Committee approved the advertisement of a Traffic Regulation Order for additional parking in St Margaret's Drive for parents who drop off and pick up pupils of St Joseph's School. It was subsequent to the Committee's approval to advertise the Traffic Regulation Order that officers and then Committee were first made aware of the legal issues outlined above. In view of the dispute Committee resolved in September 2013 that the proposal to

provide parking for parents be deferred indefinitely, until such time as the matter is resolved.

1.12 The dispute over the right of access over the private access road is a matter for the owners of Abelea Green and the Diocese to resolve between them, and is not a matter for the County Council to address in its capacity as highway authority.

1.13 The Committee is asked to note the report.

Contact Officer: Nick Healey, Area Team Manager (NE)

Consulted: None.

Annexes: None.

Sources/background papers: None.

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