

Agenda Item

Executive Board

31 March 2010

LA4/22/AHS



Land at Peak Hill, Sidmouth

Exempt Information

Para 3, Schedule 12A Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Summary

The report summarises the the options and liabilities for the Council as regards ongoing maintenance of land adjacent to Peak House, Peak Hill, Sidmouth.

Recommendation

1. To authorise the Head of Streetscene Services to implement the works specified in para.1.6 of the report within a timetable to be agreed with the owner of Peak House;
2. To consider the most appropriate method of funding the remedial work required on land adjacent to Peak House, both in accordance with the costs identified in para.1.6 of the report, and on annual basis.

a) Reasons for Recommendation

The Council has responsibilities as lessee of the land.

b) Alternative Options

Take no further action on the basis that the maintenance work outlined does not rank as a realistic service priority for the relevant Council department.

c) Risk Considerations

By not implementing the recommendation the Council risks being found in breach of covenant and subject to formal proceedings to obtain orders of specific performance.

d) Policy and Budgetary Considerations

There is no budget allocated for the work identified in the report, and therefore special provision will need to be made.

e) Date for Review of Decision

N/A

1 Main Body of the Report

1.1 Background

The Council is lessee of land adjacent to Peak House, the land having originally been demised in 1958 by the then owner of Peak House to the former Sidmouth UDC under a 999 year

lease. Appendix 1 is the plan from the Council's leasehold title, showing the land edged bold. This authority took over the landholding at the time of local government reorganisation in 1974.

1.2 The 1958 lease contains covenants for the Council:

- (a) To keep the land in its natural condition for the term of the lease (this does not prevent the use of the land for the grazing of cattle or sheep, or for the growing of crops);
- (b) To maintain the driveway leading through the field to Peak House in good repair, including the footpath, drains and all boundary walls and fences;
- (c) To maintain the existing belt of ornamental trees and to replace any trees so as to form an effective screen between the land on the east side of the driveway and Manor Road car park;
- (d) To preserve and manage other trees growing on the site;
- (e) Not to sell or assign its leasehold interest without the written consent of the lessor or his successors in title.

1.3 Neighbour complaints

There have been complaints over recent years from the present owner of Peak House about the standard of the Council's maintenance and a temporary compromise has usually been found. This year, however, the owner has become more vociferous and has identified the following:

- (a) Poor condition of the boundary fence on the north and west sides of the land;
- (b) Suggested breaches of the grazing agreement operated by the Council in favour of a local farmer;
- (c) Trees which have replaced in the past have died;
- (d) Potholes in the driveway have not been repaired properly; drains are blocked with vegetation, causing unnecessary flooding at times of heavy rainfall.

1.4 The above complaints have been confirmed in correspondence with the Deputy Chief Executive and remedial work requested; more recently, the owner has threatened legal action unless the breaches of covenant are rectified.

1.5 On one level the required work may not be considered of sufficient priority for the Council at a time of budgetary restraint; on another level, however, Members should recognise that continued inaction on the Council's part could reflect badly on its role as guardian of a prominent green space close to Sidmouth town centre; and, additionally, there is the prospect of formal legal action to correct the alleged breaches of covenant.

1.6 Cost analysis

Streetscene officers have identified the following costs of remedial work:

275m of stock proof fencing (pig netting and one strand of barbed wire) at £13/m = £3575

Clear pipe beneath road from field towards Car Park

Clear out ditch between road and Car Park.

Clear gullies and flush out pipe work with Jetter.

Remove spoil and silt to a licensed tip = £2000

Cost for renovating the copse in the middle of the field and replanting trees on the driveway – for this year.

Copse renovation. 2 arborists + chipper and 4WD vehicle for 3 days = £1185

Tree replacement. 8 x 10-12cm girth trees, planting materials and labour = £1000 (Could be done cheaper if smaller trees used, but survival rate would reduce).

Total = £7,760

1.7 There is no budget within Streetscene to cover the above work; an expedient in the past has been to divert funds from other sources to cover only basic remedial repairs. Clearly, to avoid ongoing complaints and to establish a proper maintenance programme, the Council will need to make a more concerted effort; the above breakdown is a start. It should also be acknowledged that some of the costs may be repeated on an annual basis.

1.8 Conclusion

It is recommended that Members seek a constructive solution, rather than concluding that this is a landholding not warranting special attention or expense: the risk of taking the latter view would be damaging publicity for the Council and, at worst, legal proceedings, the outcome of which could be uncertain. One answer would be to 'ring-fence' money received under the grazing agreement (the most recent one signed in March 2009) and use this in part payment of the remedial works; other funds would need sourcing from other budgets.

Legal Implications

Contained in the report.

Financial Implications

If the work was to EDDC property it probably wouldn't be a priority bearing in mind the current financial situation. However a sum of £8,000 was put forward as a special item for 2010/11 to undertake this work but, as all special items were rejected, there is no available budget. £600,000 has already been taken from Reserves in order to balance the 2010/11 budget.

Consultation on Reports to the Executive

N/A

Background Papers

- Lease dated 28 May 1958 between Louis John Lee (1) and Urban District Council of Sidmouth (2); Grazing Agreement dated 5 March 2009 between EDDC (1) and N J Baker, K G Baker and D K Baker (2); and other Land Registry documents
- Correspondence with Council departments and owner of Peak House

Andrew Seddon
Senior Solicitor

Executive Board
31 March 2010