

## ED2. EXECUTIVE DECISIONS BY A CABINET MEMBER OR AN OFFICER

<b>A. Report Title:</b> Delafield Road Open Space – Fencing / Access	
<b>B. Report Author(s):</b> Luke Love	<b>Tel:</b> 01375 652807 <b>E-mail:</b> lalove@thurrock.gov.uk
<b>C. Decision Maker:</b> Cllr Garry Hague	
<b>D. Position held:</b> Portfolio Holder for the Environment	
<b>E. Key decision:</b> NO	<b>F. Delegation ref:</b>
<b>G. Is the decision urgent?</b> YES	
<b>H. If yes, state why.</b> To resolve the boundary issue, and enable any required work to commence as soon as possible.	

<b>I. DECISION (strike out whichever does not apply) :</b>	
1. I agree the recommendations in the attached report for the reasons given in the report; <b>OR</b>	
2. *My decision is:	
*The reason for my decision is:	
* Continue overleaf or on an additional sheet if necessary.	
<b>Signed:</b>	<b>Date:</b>

### URGENCY

Democratic Services will arrange for the completion of the following:	
<b>J. I confirm that in my opinion a decision on this matter is urgent and cannot reasonably be delayed:</b>	
<b>Signed:</b>	<b>Date:</b>

*To be completed by Democratic Services*

<b>Date decision received by Dem. Services:</b>	<b>Date decision published:</b>
<b>Implementation date:</b>	
<b>Relevant O &amp; S Committee:</b>	

## **A GUIDE TO THE PROCEDURE FOR MAKING AND RECORDING DECISIONS BY A CABINET MEMBER OR AN OFFICER**

### **INTRODUCTION**

The essential principle is that a decision by a Cabinet Member or an Officer takes the place of a conventional decision taken by full Cabinet. It must therefore be based upon an **Officer report** following the usual requirements for both content and consultation with other Heads of Services, including the Legal and Finance teams.

The report should contain a clear recommendation in the form of a resolution or minute.

The correct template should be used and is accessible through J:\Thurrock\Corporate Templates - Delegated Decision Proforma.

### **A and B. TITLE AND AUTHORS OF THE REPORT**

These should be the same as in the accompanying report and the Officer's contact details included.

### **C. NAME OF DECISION TAKER**

Name and initial

### **D. POSITION AND RESPONSIBILITY HELD**

This will be the area of responsibility for a Cabinet Member or the job title of an officer.

### **E. KEY DECISION**

There are procedures for Key Decisions. If in doubt, consult the Legal Section.

### **F. DELEGATION REFERENCE**

If the decision is being made by a Cabinet Member, the delegation will appear under the name/title of the Cabinet Member in Part 3.8 of the Constitution, eg "the Leader: Delegation (m)".

If the decision is to be made by an Officer, quote the relevant number in the Officer Delegation Scheme in Part 3.9 of the Constitution, eg 12.3.68.

### **G and H. URGENCY**

Yes or No should be deleted as appropriate.

A "No" indicates that the normal call in rules will apply and the decision, once made, cannot be implemented for 5 working days.

If "Yes" is indicated the reason for the urgency must be stated. Democratic Services will contact the Chairman of the relevant Overview and Scrutiny Committee or the Mayor to agree that the matter is urgent and that, therefore, the usual call-in provisions will not apply.

### **I. DECISION**

For completion only by the person making the decision. If the recommendations in the accompanying report are correctly drafted, the decision will in the great majority of cases accord with the recommendation.

#### **J. OVERVIEW AND SCRUTINY CHAIRMAN**

Democratic Services will consult the Chairman of the Overview and Scrutiny Committee or Vice-Chairman (or if they are unavailable the Mayor) to agree that a matter is urgent and cannot await call-in and scrutiny.

#### **ACTION REQUIRED**

An Officer seeking a decision from a Cabinet Member or an Officer with the Delegated powers to make a Key Decision shall send a copy of the report together with Form KD to Democratic Services.

Democratic Services will check that it complies with procedures and then send two copies to the decision-maker (one for the decision-maker's retention) together with a return envelope and circulate the report in accordance with Administration Rules 11 and 12. The decision-maker will be asked not to make the decision until five clear days have passed (to allow time for representations) unless the special urgency procedures apply.

On receiving a signed decision from the decision-maker, Democratic Services will publish it. The implementation date (subject to call-in) will then be a further 5 working days later. The Officer seeking the decision will be notified as soon as the decision is cleared for implementation.

**Please note that taking a delegated decision should always be done in consultation with legal services – no delegated decision should be taken without their advice.**

**(Form ED2 can be found on J:\Thurrock\Corporate Templates)**

		ITEM No.
<b>DELAFIELD ROAD OPEN SPACE – FENCING / ACCESS</b>		
Portfolio Holder: Councillor Garry Hague		
Report Author: Luke Love		
Accountable Head of Service: n/a		
Accountable Director: Bill Newman		
Purpose: Provide details on access / boundary issue – Delafield, Open Space		
Wards affected: Little Thurrock Rectory	Key decision: Not Applicable	
This report is public		

**1. RECOMMENDATIONS:**

- 1.1 The access boundary issue at Delafield Road Open Space is resolved by choosing Option 2 (Installation of a fence and kissing gate), as detailed in the OPTIONS section of this report.**

**2. INTRODUCTION:**

- 2.1 The palisade boundary fence at Delafield Road open space was installed by the local Community Forum. The objective being the prevention of illegal motorcycle access, and motorcycle use on the field. When the fence was originally installed, one pedestrian access point was placed in approximately the middle of the fence run (as shown in Fig 1), with limbo bars to deter motorcycle access. This access point opened on to the alleyway at the rear of properties in Rookery View. One set of locked double maintenance gates was included to allow access for grass cutting machinery in the corner of the field. Prior to the installation of this fence there had been a wooden knee rail running along the bottom boundary of the field with various gaps allowing access onto the field.

**3. BACKGROUND:**

- 3.1 Queries and objections were received from residents of Rookery View as to the original placing of the pedestrian access point. This was due to the fear of anti social behaviour, privacy and security fears at the rear of properties.

- 3.2 This access point onto the alleyway was subsequently closed up by the installation of a fence panel—which stops access onto the field from Rookery View, creating an uninterrupted boundary.
- 3.3 Subsequent complaints were then received from users of the open space that there was no longer an access point onto the open space from Rookery View.
- 3.4 As a temporary measure, until resolution of the issue, two fence panels were removed from the fence run to allow access onto the open space. This is how the boundary remains.
- 3.5 Initially the issue of the alleyway being apparent private access, was not a concern of the former Chair of the Community Forum, who was happy to allow pedestrian access along the track at the side of number 59 Rookery View – as long as the entrance gap was moved further along the boundary, away from number 59.
- 3.6 There is an existing tarmac footpath that runs across the field, leading to an obvious, and previously used access point. It is unsure when this path was built. This footpath currently runs to the fence.
- 3.7 Since the boundary fence has been in place, with and without access points, there have been queries, complaints, petitions and requests received from all parties, both for and against having access onto the field from the alleyway at the rear of Rookery View.
- 3.8 The owners of properties at Rookery View have access rights to this alleyway, but is owned by the original landowners or builders – **not** the owners of properties in Rookery View.
- 3.9 There is a metal barrier to prevent vehicular access along the track at the side of 59 Rookery View. It is unclear when this barrier was originally installed. Thurrock Council have access along this track, to the maintenance gates located at the end of the newly created boundary in the South East corner of the open space.

#### 4. **OPTIONS:**

- 4.1 **Option 1** The boundary fence adjoining Rookery View is made solid, with no pedestrian access points along its entire length – this is the nearest option to the original covenant on the land.) The actual designated entrance to the open space is in Delafield Road. This would prevent pedestrian access from Rookery View to all concerned - and would inevitably cause negative feedback from many open space users, as well as some residents of Rookery View
- 4.2 **Option 2** An access point (with motor cycle deterrent i.e. a kissing gate) is created in the boundary fence where the existing footpath leads across the

open space. Pedestrians will inevitably use the alleyway to the rear of properties in Rookery View, however this will enable access to residents of Rookery View, and surrounding open space users.

- 4.3 Other suggestions have been sent to the Council and are included in Appendix 1 (Fig 2 Resident Proposal) for information. This plan proposes changes to the alleyway barrier (“upgraded gate with 400mm squeeze”) – this was never included in any part of the original Forum fencing project, and as such would incur additional costs.

**5. IMPACT ON CORPORATE PRIORITIES:**

- 5.1 N/a.

**6. OVERVIEW AND SCRUTINY:**

- 6.1 N/a.

<b>RELEVANT POLICIES</b>	
None	
<b>FINANCIAL IMPLICATIONS</b>	
<b>Prepared by: Tim Madden</b>	<b>01375 652010</b> <b>e-mail: <a href="mailto:tmadden@thurrock.gov.uk">tmadden@thurrock.gov.uk</a></b>
Either option will incur alteration costs to the fence & subsequent gates. Costs will be kept within existing budgets but could total up to £5,000 although alternative sources of funding will be explored.	
<b>LEGAL IMPLICATIONS</b>	
<b>Prepared by: Philip Edge</b>	<b>01375 652040</b> <b>e-mail: <a href="mailto:pedge@thurrock.gov.uk">pedge@thurrock.gov.uk</a></b>
The Council acquired the field in 1928. The conveyance to the Council contains a covenant to erect and forever maintain a good and sufficient fence or wall not exceeding five feet in height on the boundary with Rookery View. Public access to the playing field was provided via Delafield Road. The kissing gate in Option 2 potentially breaches that covenant.	
<b><i>It is not possible to say with certainty who could enforce the covenant. As the persons who sold the land to the Council retained some land they could. However they may not be alive. It is uncertain if the ability to enforce the land was passed on to their successors. The residents of Rookery view have not been given the ability to enforce the covenant in the deeds I have seen.</i></b>	
A number or residents are asserting there is a public right of way over the track by foot alongside 59 Rookery View on to the playing field. Whether there is or not depends upon public user for 20 years without interruption as of right without permission, without secrecy and without permission. This is a matter of evidence and	

would have to be rigorously investigated. The track has a lockable barrier, which has been there for a number of years. This negates the existence of any public right of way. In any event there is perfectly adequate access to the playing field via Delafield Road.

**DIVERSITY & EQUALITY IMPLICATIONS**

**Prepared by: Samson DeAlyn**

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The council is under a statutory obligation to consider the impact of all its policies and decisions on local residents. In considering the options the following points need to be noted:

**Option 1**

Whilst this approach would be the nearest to the original covenant on the land. This option would limit the access of residents to the recreation ground. This would have implications in terms of other important duties regarding accessibility as set out in the Disability Discrimination Act regarding the need for the Council to make reasonable adjustment to facilitate access for disabled residents. The limitation placed on access at this point would provide a detriment to some local residents, for example those with children, and those with physical disabilities and needing accessibility support.

**Option 2**

This option would provide an access point in the boundary fence where there is an existing footpath. This would be a practical approach, and provide an access point in relation to the existing path and movement of pedestrians.

However, If option 1 is chosen then Members need to be aware that this would result in limited accessibility for vulnerable groups for example older people, those with a disability and those with children. If option 2 is chosen this would promote proper accessibility whilst tackling the issue of motorcycle access, and motorcycle use in the field.

**OTHER IMPLICATIONS**

**BACKGROUND PAPERS**

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