



Belfast City Council

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| Report to: | Parks and Leisure Committee |
| Subject: | Cherryvale Gate Lodge – Proposed Change of Use and Utility Wayleaves |
| Date: | 11 September 2014 |
| Reporting Officer: | Andrew Hassard, Director of Parks and Leisure, Ext 3400. |
| Contact Officer: | Cathy Reynolds, Estates Manager, Property and Projects Department, Ext. 3493. |

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| 1 | Relevant Background Information |
| 1.1 | By a 999 year Lease dated 18 March 1998 and Supplemental Lease dated 5 March 1999 the Council disposed of the Gate Lodge at 670 Ravenhill Road. The Gate Lodge is situated near the entrance to Cherryvale Playing Fields (see map attached at Appendix 1). The Lease restricts use of the property to residential purposes and preserves the Council's rights of drainage and sewerage across the Gate Lodge site from the remainder of Cherryvale Playing Fields. |
| 1.2 | The current owners of the Gate Lodge, Conor McGirr and Siobhan McGirr, have made representations to the Council seeking a variation of the Lease to allow the property to be used for office purposes. A copy of a letter from Conor McGirr, dated 7 September 2012, is attached as Appendix 2 to this report. |
| 1.3 | From investigations on site it also appears that a number of utilities which serve the Gate Lodge appear to cross the Council's land at Cherryvale Playing Fields. It appears the route of these utility services has not altered since the time of the 1998 Lease and that a general right to enjoy the utilities (then) installed, should reasonably have been included within the terms of the Lease. |

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| 2 | Key Issues |
| 2.1 | Use of the present building on the site, for residential and/or office |

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| | <p>purposes appears to be compatible with the use of the adjoining Park. The 1998 Lease will continue to contain covenants which require the Leaseholder to seek Council consent to any external alteration to the property. The Council will retain the power to object to any proposed future development on the site, if that development was of a scale which was incompatible with the Park. The present Leaseholder obtained Planning Approval in September 2013 for a change of use to offices. In respect of a proposed variation of the terms of a Lease the Council would be entitled to seek a premium from the Leaseholder if the value of the Leaseholder's interest is increased on account of the Council's consent to the variation. In this case the value of the property for office use is considered not to exceed its value for residential purposes and thus no premium would become payable by the Leaseholder to the Council in this instance.</p> |
| 2.2 | <p>At the time the property was sold by the Council it was not the Council's intention that services, across the Council's adjoining land to the Gate Lodge, would be disconnected or re-routed. It is therefore considered the property should continue to enjoy the benefit of those services which pass through the Council's adjoining property en route to the Leased property. It is also considered the Council should seek to preserve entitlement to any similar services which pass through the Leased property en route to the Council's adjoining land. It would appear reasonable that both these provisions would also exclude the right to install any new services across the respective lands of the other party.</p> |
| 2.3 | <p>Any proposed variation of the terms of the 1998 Lease would require incorporation within a Deed of Variation. While the balance of benefit from these arrangements may lie with the Leaseholder, it is considered, in view of the reciprocal benefit to the Council, that each side would bear their own legal expenses in connection with the drawing up and execution of the proposed Deed of Variation.</p> |

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| 3 | Resource Implications |
| | <u>Financial</u> |
| 3.1 | There are no financial implications to the Council arising from this report. |
| | <u>Human Resources</u> |
| 3.2 | Legal Services and Estates Management Unit resources required in drawing up and agreeing the terms of proposed Deed of Variation. |
| | <u>Asset and Other Implications</u> |
| 3.3 | The Leaseholders and the Council may mutually benefit in relation to the proposed formalised arrangements associated with provision of utility services. The Leaseholder would benefit from the flexibility the proposed |

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| | change of use would bring him and the Council would retain safeguards in the Lease in relation to the future compatibility of any future development with the surrounding Playing Fields. |
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| 4 | Equality and Good Relations Considerations |
| 4.1 | There are no equality or good relations issues associated with this report. |

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| 5 | Recommendations |
| 5.1 | <p>Committee is recommended to:</p> <ol style="list-style-type: none"> 1. Authorise the proposed alteration of the User clause in the Lease dated 18 March 1998 to allow use of the premises for residential and/or office purposes. 2. Authorise the formalisation of arrangements in relation to the grant of rights to the Leaseholder and the Council in relation to currently installed utility services at 670 Ravenhill Road/ Cherryvale Playing Fields. 3. Subject to the approval of the Strategic Policy and Resources Committee, in accordance with Standing Orders, to authorise the proposed change of User and Grant of Rights be incorporated within a Deed of Variation to be drawn up by the Town Solicitor with each side bearing their own legal costs. |

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| 6 | Decision Tracking |
| The Director of Parks and Leisure to liaise with the Director of Property and Projects with a view to bringing this matter to the next available meeting of the Strategic Policy and Resources Committee. | |

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| 7 | Key to Abbreviations |
| None | |

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| 8 | Documents Attached |
| <p>Appendix 1 – Map showing location of Gate Lodge site (outlined red) and adjoining Council owned land at Cherryvale Playing Fields (shaded yellow).</p> <p>Appendix 2 – Letter from Conor McGirr seeking change of use.</p> | |