

ANGUS COUNCIL

NEIGHBOURHOOD SERVICES COMMITTEE – 8 OCTOBER 2009

REPORT BY THE DIRECTOR OF NEIGHBOURHOOD SERVICES

DISPOSAL OF THE COUNCIL'S SHARE IN AN AREA OF GROUND AND CORRECTIVE  
CONVEYANCING AT 43 WESTFIELD PLACE, CARNOUSTIE

**Abstract:** This report relates to the disposal of the Council's share in an area of ground at 43 Westfield Place, Carnoustie. Corrective conveyancing is also required in connection with the original sale of the property.

**1. RECOMMENDATION**

- 1.1 It is recommended that the Committee agree to the sale of the Council's share in an area of ground adjacent to 43 Westfield Place, Carnoustie to the owner of 43 Westfield Place, Carnoustie on appropriate terms and conditions, subject to:
- (i) Section 12 consent being received from the Scottish Ministers;
  - (ii) Planning permission for change of use being granted;
  - (iii) The owner of 43 Westfield Place acquiring the common rights to the area currently held by the proprietor of number 109 Barry Road, Carnoustie;
  - (iv) The owner of 43 Westfield Place meeting the valuation and deed plan costs in connection with the disposal
- 1.2 It is further recommended that the Committee approve corrective conveyancing to allow ownership of a further area of ground at 43 Westfield Street to be transferred to the owner of 43 Westfield Street at no cost.

**2. BACKGROUND**

- 2.1 The owner of number 43 Westfield Place, Carnoustie has applied to purchase an area of ground adjacent to her property.
- 2.2 During the course of enquiries relating to the application, it was discovered that a smaller area of ground that should have been sold with the property when it was purchased from the Council in 1990, was not included in the sale.
- 2.3 The enquiries relating to the application to purchase additional ground also revealed that the property at 109 Barry Road, Carnoustie was sold with rights in common to the larger area that the owner of 43 Westfield Place wishes to purchase.

**3. CURRENT POSITION – DISPOSAL OF GROUND**

- 3.1 The proprietors of number 109 Barry Road have confirmed that they are willing to relinquish their common rights in the area in favour of the owner of number 43 Westfield Place. This would be required to ensure that the owner of 43 Westfield Place had clear title to the ground. It is proposed therefore that a suspensive condition of the

missives should be that the rights held by the owners of 109 Barry Road must be acquired within six months.

3.2 The Council's valuers, Graham and Sibbald, have valued the Council's share in this area of ground at £4000.

3.3 The area of ground is shown shaded on the [attached plan](#).

#### **4. CURRENT POSITION – CORRECTIVE CONVEYANCING**

4.1 The property at 43 Westfield Place was sold under the Right to Buy legislation in 1990. As part of the sale process, a plan of the property was prepared and would have been accepted as correct by the tenants' agent at the time of purchase.

4.2 Section 64(1)(a) of the Housing (Scotland) Act 1987 states that "the (sale) conditions shall have the effect of ensuring that the tenant has as full enjoyment and use of the house as owner as he had as a tenant;". The area of ground, which includes the path leading to the front door of the property, clearly formed part of the tenancy and as such should have been sold.

4.3 The District Valuer was unable to confirm if the valuation of the property included this additional plot as they do not hold detailed records for work carried out as far back as 1990.

4.4 The owner of 43 Westfield Place was unaware that she did not own the smaller area of Ground which is shown hatched on the **attached plan**.

#### **5. FINANCIAL IMPLICATIONS**

The financial implications arising from the disposal of the additional ground would be a capital receipt of £4000 accruing to the HRA capital account.

5.2 The smaller area of ground has been valued at £350 by an officer from the Property Services division. It is not known what the value of the ground would have been in 1990, but, whatever the valuation, it would have been sold at a discounted price, along with the property and other areas of garden ground.

5.3 It has been agreed in this case that both sides would meet their own legal fees for both disposal and corrective conveyancing.

5.4 The Council's legal fees are expected to be in the region of £350 and will be met from the Housing Revenue Account.

#### **6. HUMAN RIGHTS IMPLICATIONS**

6.1 There are no Human Rights implications arising from this report.

#### **7. EQUALITIES IMPLICATIONS**

7.1 The issues contained in this Report fall within an approved category that has been confirmed as exempt from an equalities perspective.

#### **8. CONSULTATION**

8.1 The Chief Executive, the Director of Corporate Services, the Director of Infrastructure Services, the Head of Finance, the Head of Law and Administration and the Head of Property Services have been consulted in the preparation of this report.

## **9. CONCLUSION**

- 9.1 The disposal of this area of ground that is surplus to requirements will result in a useful capital receipt of £4000 accruing to the Housing Revenue Account. Consequently it is recommended that the ground is sold.
- 9.2 It is clearly stated in the Housing (Scotland) Act 1987 that a tenant is entitled to purchase their property and any garden ground, etc. that forms part of their tenancy. As the plot shown hatched formed part of the tenancy of number 43 Westfield Place, and was not sold at the time of the original purchase, ownership should now be transferred to the proprietor at no cost.
- 9.3 Anyone purchasing an additional area of ground from the Council would be expected to meet all fees in connection with the sale. Similarly, the Council would be liable for the fees incurred for corrective conveyancing. It is therefore appropriate that in this case, both sides meet their own legal expenses.

**RON ASHTON  
DIRECTOR OF NEIGHBOURHOOD SERVICES**

**NOTE:** No background papers, as defined by Section 50d of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information), were relied on to any material extent in preparing this report.

**Hsg/NS/AMcK/AR**

