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Southend-on-Sea Borough Council

Legal & Democratic Services

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22 February 2021

Dear Councillor

CABINET COMMITTEE - MONDAY, 22ND FEBRUARY, 2021

Please find enclosed, for consideration at the next meeting of the Cabinet Committee taking place on Monday, 22nd February, 2021, the following report(s) that were unavailable when the agenda was printed.

Agenda No Item

7. **Thorpe Bay Gardens Covenant (Pages 1 - 14)**
Report of Executive Director (Neighbourhoods & Environment)

Tim Row
Principal Democratic Services Officer

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Southend-on-Sea Borough Council

Agenda
Item No.

7

Report of Executive Director
(Neighbourhoods & Environment)
to
**Traffic Regulation Working Party
and Cabinet Committee**
on
22 February 2021

Report prepared by Sharon Harrington
Head of Service, Traffic & Highways

Thorpe Bay Gardens Covenant

Place Scrutiny Committee - Cabinet Member: Councillor Woodley
Part 1 Public Agenda Item

1. Purpose of Report

- 1.1 To inform the Traffic Regulations Working Party and the Cabinet Committee of a covenant ("the Covenant") that affects Council owned land, that has been bought to the attention of the service in relation to parking restrictions in Thorpe Bay Gardens.

2. Recommendation

- 2.1 **The Working Party is requested to agree that, given the terms of the Covenant, the service is to implement a scheme to restrict parking further.**
- 2.2 **There is concern that implementing restrictions in order to meet the requirements of the Covenant will cause major displacement in neighbouring roads; therefore Option 3 outlined below if agreed by Cabinet Committee is likely to save further requests at a later stage being requested of the service.**

3. Covenant

- 3.1 When the Council acquired the freehold of the land in 1962, as landowner, it covenanted with the Seller to:

"ensure as far as reasonably possible, that no parking of cars is permitted on the North side of Thorpe Bay Gardens, eastwards from its junction with St Augustine's Avenue".

A covenant is a restriction over land whereby usually the party acquiring the land (here the Council) agrees not to do something for the benefit of those who retain adjoining land.

- 3.2 Currently parking restrictions of a single yellow line restricting parking from 09:00 to 18:00, with no restriction at all during winter months is arguably not in keeping with the Covenant which states “*all reasonable steps*” to be taken by the Council to restrict parking.
- 3.3 Parking in this location has for many years been an issue; however, since the start of COVID-19 the number of vehicles parking up in this location has increased to the point that residents are now asking for the Covenant to be fully implemented.

It must be noted that whether there is one car parked or multiple it is irrelevant to the compliance of the covenant.

- 3.4 Residents have therefore requested that to support the Covenant the seasonal restriction be removed, and the single yellow lines must be replaced with double yellow lines 24/7. A further request to install double yellow lines on the opposite side of the road has also been received due to the potential displacement that double yellow lines will create. The south side is not though subject to the Covenant.
- 3.5 The Cabinet Committee do need to take into consideration that any decision they make is as the highways authority and not as landowner and the Council, as landowner, is, in effect, asking the Council as highways authority to implement the terms of the Covenant.

4. Options

4.1 Option 1:

- Do nothing is an option but leaves the Council, as landowner, open to potential legal challenge by the residents of Thorpe Bay Gardens if they have acquired the ability to enforce the covenant against the Council to compel it to comply with the Covenant. If any such potential claim was successful, then the Council will potentially be liable for the associated legal costs of both parties.

4.2 Option 2:

- To replace the Single Yellow Lines with Double Yellow Lines; North side of Thorpe Bay Gardens, eastwards from its junction with St Augustine’s Avenue
- To implement the double yellow line enforcement 12 months of the year
- To implement a restriction that covers 24/7 *

4.3 Option 3:

- To replace the Single Yellow Lines with Double Yellow Lines; North and South side of Thorpe Bay Gardens, eastwards from its junction with St Augustine’s Avenue.
- To implement the double yellow line enforcement 12 months of the year

- To Introduce double yellow lines along Barrow Sands and Marcus Avenue to support further displacement of vehicles.

Notes:

** enforcement officers do not currently work 24/7; although enforcement hours are being reviewed it is likely they will not be asked to work 24/7 apart from pre-planned targeted enforcement operations that will occur across the borough.*

** Blue Badge Holders will still be permitted to park on double yellow lines without further loading restrictions (yellow kerb markings).*

5. Corporate Implications

5.1 Contribution to the Southend 2050 Road Map.

- 5.1.1 Ensuring that driver behaviour is improved, and speed and collisions reduced, will be consistent with the Council's 2050 Vision of Safe & Well and that people in all parts of the borough feel safe and secure at all times.

5.2 Financial Implications

- 5.2.1 Costs for implementation of this review and development of the associated action plan, if approved, would need to be met from revenue of the parking account

5.3 Legal Implications

- 5.3.1 The statutory consultative process for Traffic Regulation Orders will be followed. Any objections received will be responded to by the service area.
- 5.3.2 Non-compliance of the Covenant by the Council could leave the Council open to legal challenge as detailed in Option 1

5.4 People Implications

- 5.4.1 Works required to implement the scheme will be undertaken by existing staff resources.

5.5 Property Implications

- 5.5.1 None

5.6 Equalities and Diversity Implications

- 5.6.1 Any implications have been taken into account in designing the review.

5.8 Risk Assessment

- 5.8.1 The proposals are designed to improve highway safety and as such, is likely to have a positive impact.

5.9 Value for Money

- 5.9.1 The Council's term contractors, have been selected through a competitive tendering process to ensure value for money.

5.10 Community Safety Implications

- 5.10.1 The review and subsequent action plan, if implemented, will lead to improved community safety.

5.11 Environmental Impact

- 5.11.1 The potential environmental impact is not known at this stage, but it is envisaged that there could be a potential improvement in air quality if driver behaviours can be positively adjusted.

6. Background Papers

- 6.1 None

7. Appendices

- 7.1 **Appendix 1** – Copy of the conveyance dated 14 December 1962 made between (1) Thorpe Bay Estate Company and (2) The Mayor Aldermen and Burgesses of the County Borough of Southend on Sea (contains the covenant: the Second Schedule, paragraph 4).

These are the notes referred to on the following official copy

Title Number EX827068

The electronic official copy of the document follows this message.

This copy may not be the same size as the original.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.



This Conveyance

is made the *fourteenth* day of

December One thousand Nine hundred and Sixty-two BETWEEN THORPE BAY STATE COMPANY whose registered office is at 7 Linenhall Street Belfast Northern Ireland (hereinafter called "the Vendor") of the one part and THE MAYOR ALDERMEN AND BURGESSES OF THE COUNTY BOROUGH OF SOUTHEND-ON-SEA (hereinafter called "the Corporation") of the other part WHEREAS the Vendor is seized of the property hereinafter described in fee simple in possession subject only as is hereinafter mentioned and has agreed with the Corporation for the sale thereof at the price of Seven thousand Four hundred and Seventy-five Pounds.

NOW THIS DEED WITNESSETH as follows:

- IN consideration of the sum of SEVEN THOUSAND FOUR HUNDRED AND SEVENTY-FIVE POUNDS now paid by the Corporation to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as Beneficial Owner hereby conveys unto the Corporation ALL THAT piece or parcel of land situate at Thorpe Bay in the County Borough of Southend-on-Sea bounded on the southerly side by Thorpe Esplanade on the westerly side by St. Augustine's Avenue on the northerly side by Thorpe Bay Gardens and on the easterly side by Maplin Way which said land is delineated on the plan annexed hereto and thereon coloured green blue red brown yellow and white surrounded with a yellow line EXCEPT AND RESERVING unto the Vendor the free and uninterrupted passage and running of water and soil from other buildings and land of the Vendor and its tenants adjoining or near the said piece of land through the sewers drains and watercourses which are now or may hereafter be constructed in or under the said land hereby conveyed TO HOLD the same unto the Corporation in fee simple subject to the covenants and conditions contained in the Leases or Agreements particulars parties and rents of which are respectively set out in the First Schedule hereto.
- THE Corporation on behalf of itself and its successor in title and assigns for the benefit of the remaining land of the Vendors or their lessees and so as to be binding on the land into whosesoever hands the same may come hereby covenants with the Vendor and its successors in title to observe and perform the covenants and conditions set out in the Second Schedule hereto.
- THE Vendor agrees to the Corporation (i) incorporating into Thorpe Bay Esplanade the thin portion of land bordering the extreme South boundary of the land hereby conveyed coloured blue and unhatched on the plan annexed hereto and (ii) to the land denoted by a thin red line adjoining Thorpe Esplanade being used for the parking of private cars only and not charabancs or caravans or commercial vehicles.
- THE Corporation will (a) lay out as gardens or a public open space that part of the land conveyed coloured green on the said plan and (b) lay out and maintain two means of access from Thorpe Bay Gardens to Thorpe Esplanade for pedestrians only along the strips of land coloured blue and hatched black on the said plan.
- SO as to keep the level of the land coloured brown on the said plan on which the

PRODUCED TO THE REGISTRAR OF LANDS BY THE VENDOR
- 2 JAN 1963

SECT 12

RE 1/1

THE SECOND SCHEDULE before referred to

1. That portion of land coloured green on the said plan shall be used as gardens or a public open space and for no other purpose whatsoever.
2. The said piece of land coloured brown on the said plan shall be used for no other purpose than as a public open space or gardens as aforesaid or for parking of private cars only excluding commercial vehicles caravans or motor coaches of any description whatsoever.
3. That the said piece of land coloured yellow and white surrounded with a yellow line on the said plan shall be used for no other purpose than a dinghy park or open space or gardens.
4. The Purchasers will ensure as far as reasonably possible that no parking of cars is permitted on the North side of Thorpe Bay Gardens eastwards from its junction with St. Augustine's Avenue.
5. That no building whatsoever shall be erected on any of the land hereby agreed to be sold other than garden shelters car park attendance shelters or public conveniences the plans for all of which shall first be approved of by the Vendors Surveyor and that no business whatsoever for the sale of teas or confectionery or any other item of any nature whatsoever will be permitted by the Purchasers on any part of the land hereby agreed to be sold provided that nothing shall prevent the Purchasers making a suitable charge for the use of any tennis court bowling green or putting green or hiring of chairs on any part of the land coloured green or for charging for the use of the Car Park that may be erected on any part of the land coloured brown on the plan annexed hereto.

THE THIRD SCHEDULE before referred to

<u>Date of Deed</u>		<u>Nature of Deed and Names of Parties thereto</u>
7th July 1896	INDENTURE	- made between Ynyr Henry Burges of the first part Ynyr Richard Patrick Burges and Frederica Florence Elizabeth Burges of the Second part the Earl of Latham and James Van Sommer of the third part James Henry Strange and William Van Sommer of the fourth part.
10th November 1903	DEED POLL	- made between Ynyr Henry Burges of the one part and Ynyr Richard Patrick Burges of the other part.
7th December 1906	INDENTURE	- made between Ynyr Henry Burges of the one part and Sir James Henry Strange and William Van Sommer of the other part.
21st March 1922	INDENTURE	- made between Ynyr Alfred Burges of the one part and Richard Herbert Chilcote of the other part.
30th October 1925	INDENTURE	- made between Frederica Florence Elizabeth Burges of the one part and Ynyr Alfred Burges of the other part.
18th November 1958	INDENTURE	- made between Ynyr Alfred Burges of the one part and the Vendor of the other part.

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THE THIRD SCHEDULE before referred to

<u>Date of Deed</u>		<u>Nature of Deed and Names of Parties thereto</u>	
7th July	1896	INDENTURE	- made between Ynyr Henry Burges of the first part Ynyr Richard Patrick Burges and Frederica Florence Elizabeth Burges of the Second part the Earl of Latham and James Van Sommer of the third part James Henry Strange and William Van Sommer of the fourth part.
10th November	1903	DEED POLL	- made between Ynyr Henry Burges of the one part and Ynyr Richard Patrick Burges of the other part.
7th December	1906	INDENTURE	- made between Ynyr Henry Burges of the one part and Sir James Henry Strange and William Van Sommer of the other part.
21st March	1922	INDENTURE	- made between Ynyr Alfred Burges of the one part and Richard Herbert Chillcott of the other part.
30th October	1925	INDENTURE	- made between Frederica Florence Elizabeth Burges of the one part and Ynyr Alfred Burges of the other part.
18th November	1958	INDENTURE	- made between Ynyr Alfred Burges of the one part and the Vendor of the other part.

parking of private cars is permitted below the path level of Thorpe Bay Gardens the Corporation -

- (a) Shall not raise the level of the land shown coloured brown and brown hatched green on the said plan above its existing level;
- (b) shall excavate the said land to the North of the existing bank to carry through the present level at the Northern extremity of the existing car park to a point as near as possible to the Northern boundary of the land leaving a satisfactory bank on land shown coloured brown and hatched green on the said plan to retain the site of Thorpe Bay Gardens.

6. THE Corporation shall pay all costs and charges in respect of making up and taking over by them as a highway maintainable at the public expense or all charges under the Highways Act 1959 or similar Act in respect of that portion of road known as St. Augustine's Avenue as flanks on the said piece of land hereby conveyed.

7. THE Vendor hereby acknowledges the right of the Corporation to production of the documents set out in the Third Schedule hereto and to delivery of copies thereof and hereby undertakes with the Corporation for the safe custody of the same.

IN WITNESS whereof the Vendor and the Corporation have hereunto caused their respective Common Seals to be affixed the day and year first hereinbefore written.

THE FIRST SCHEDULE before referred to

<u>Date of Lease or Agreement</u>	<u>Description of Document</u>	<u>Lessee</u>	<u>Description of land let and user</u>	<u>Term</u>	<u>Rent</u>
16th September 1960	Licence				
12th June 1961	Deed of Variation	F.Patten Limited	Piece of land North side of Thorpe Esplanade, Thorpe Bay	5 years from 25th March 1961	£300 per annum
15th July 1961	Lease	The Trustees of Thorpe Bay Yacht Club	Dinghy Park coloured yellow on plan attached hereto	25 years from 25th March 1961	£60 per annum for first 5 years £70 per annum for second 5 years £80 per annum for third 5 years £90 per annum for fourth 5 years and £100 per annum for remaining 5 years
26th June 1961	Licence	Miss Diana Crooks	The Western portion of land hereby agreed to be sold from St. Augustine's Avenue extending about 1,000 feet eastwards	One year from 25th March 1961	£52 per annum
3rd May 1861	Lease	The Lords of the Admiralty	Part of the Coast-guard Station	Expired (Lessee holding over on terms of expired agreement)	No rent to be apportioned to Purchaser
12th August 1930	Surrender	The Lords of the Admiralty to Captain Y.A. Burges	Boathouse and Right of Way		

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THE COMMON SEAL of THORPE BAY ESTATE
COMPANY was hereunto affixed in the
presence of:-

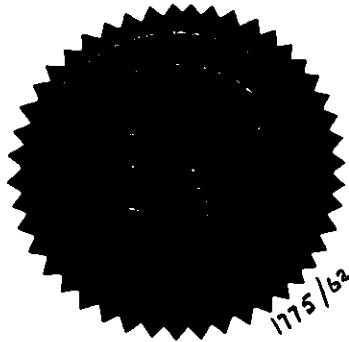
J. H. Stange. } Directors.

Richard Hughes Secretary.

THE COMMON SEAL of THE MAYOR ALDERMEN
AND BURGESSES OF THE COUNTY BOROUGH OF
SOUTHEND-ON-SEA was pursuant to a
resolution of the Council hereunto
affixed in the presence of:-

E. J. Jewell
G. Poole. } Two Members
of
the Council

[Signature]
Town Clerk.



THE COMMON SEAL of THORPE BAY ESTATE
COMPANY was hereunto affixed in the
presence of:-

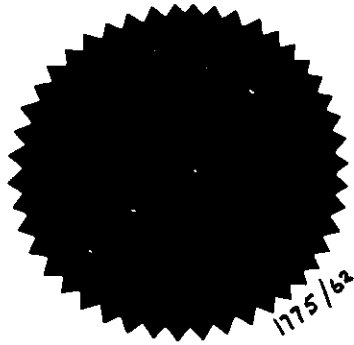
J. H. Stronge. } Directors.

Richard Dungey } Secretary.

THE COMMON SEAL of THE MAYOR ALDERMEN
AND BURGESSES OF THE COUNTY BOROUGH OF
SOUTHEND-ON-SEA was pursuant to a
resolution of the Council hereunto
affixed in the presence of:-

E. J. Smith } Two Members
G. Hoole } of
the Council

[Signature]
Town Clerk.



DATED

17th December

1962

THORPE BAY ESTATE COMPANY

-to-

THE CORPORATION OF SOUTHBEND-ON-SEA

Conveyance

of

Land in Thorpe Esplanade between
St. Augustine's Avenue and Maplin
Way, Thorpe Bay.

DP 2740



BOROUGH ENGINEER & SURVEYOR
 SOUTHEND-ON-SEA.
 22. 2. 56.
 PLAN NO. 415

