

To: City Executive Board

Date: 13 November 2013

Report of: Head of Environmental Development and the
Regeneration & Major Projects Manager

Title of Report: ACQUISITION OF RIVERSIDE LAND ADJACENT TO
ABBEY ROAD BY ADVERSE POSSESSION

Summary and Recommendations

Purpose of report: To seek approval to the acquisition by adverse possession of the strip of riverside land adjacent to Abbey Road to allow the Council to regularize mooring on this land.

Key decision? No

Executive lead member: Councillor Ed Turner

Policy Framework: Vibrant and Sustainable Economy

Recommendation(s): The Board is asked to (i) approve the acquisition of the strip of land adjacent to Abbey Road by adverse possession to allow the Council to regularize mooring on this land and if successful, (ii) to agree limited visitor mooring to the southern section of the acquired land.

Appendices:

1. Plan
2. Risk Register

Background

1. This Report seeks approval for claiming title to the strip of land adjacent to Abbey Road (as shown highlighted in red on the plan attached as Appendix 1) by way of a claim for adverse possession.
2. The strip of land consists of a grass verge between the towpath and the river adjacent to Abbey Road.

3. The land is currently unregistered and every effort has been made to establish ownership without success. The land is used by boat owners to moor their boats. The unauthorized mooring has damaged the bank and some boat owners have engaged in anti-social behaviour which has impacted upon the residents of Abbey Road. The residents fear an escalation and a possible replication of the behaviour experienced in the area to the north of the strip of land. This involved the setting up of an encampment across the towpath, the setting of fires and other anti-social behaviour. As the land is unregistered, it is more difficult for statutory undertakers to take enforcement action against problem boat owners.
4. The Council considers it is able to claim Title to the land by adverse possession. As well as carrying out clearing and cleaning works of the towpath and the adjacent land on an annual basis, the Council carried out significant maintenance works to the bank in 1999 after the stretch of towpath was closed to the public in February 1998 due to it becoming unstable. The works involved replacing the crumbling stone and concrete reinforcements to the river walls in an environmentally friendly technique known as “willow spilling”. This involves strengthening the river walls with willow branches woven together, which then grow and protect the river bank.
5. The total cost of the work was in the region of £75,000 and this was funded by a partnership made up of Oxford City Council, Oxfordshire County Council, the Environment Agency and the Countryside Agency.
6. Whilst the works were funded by the partnership, it was Oxford City Council who took the lead in the project, including obtaining quotes and entering into the contract for the works to be carried out with Waterside UK. Law and Governance has advised we would therefore have grounds to claim title by adverse possession. An application would be made to, and determined by, the Land Registry.

Subsequent Works to the Bank

7. In 2008 the County Council replaced the willow spilling in its entirety as it was failing and proving unsuitable for the location. This was in part due to the unauthorized moorings causing damage. It was replaced with timber stakes, heavy gauge zinc coated mesh, stone fill and timber capping beams. Although, on this occasion, the works were carried out by the County, the City contributed £30,000 to the cost of the works. The County carried out the works as they were also carrying out works to the towpath which they have now formally adopted.
8. The County Council have indicated they do not want to acquire the subject land and the Environment Agency and County Council cannot be required to acquire the land.

9. If the City Council gains control of the land, it will be in a stronger position to deal with mooring on the land which is damaging the bank and may be a nuisance to local residents.

Partner Support

10. The Unlawfully Moored Boats Enforcement Group (UMBEG) consisting of Thames Valley Police, Environment Agency, Canal and River Trust and adjacent landowners support this proposal.

Financial Considerations

11. The land has a nominal value, but does attract an ongoing maintenance liability, which is estimated to be in the region of £3,000 per annum for the new timber stake engineering. In the extreme event of the renewal of the bank for the entire length being required, it is estimated the cost might be in the region of £120,000 assuming the same construction is adopted i.e. timber stakes, heavy gauge zinc coated mesh, stone fill and timber capping beams.
12. The bank is c. 330 metres long, of which about 5% is already in need of some repair and the estimated cost is c. £10,000. If no on-going maintenance / repair works take place following a successful claim, there is a risk that possibly 20% will need to be repaired / replaced in the next 5 to 10 years. The current cost of this work is estimated at £35,000.
13. It is estimated the entire length of the bank will need replacing in 20-25 years providing regular maintenance works are carried out.
14. If the City Council does not gain control of the subject land, it is likely there will be more damage to the land resulting in increased costs with the repair works being required sooner than if the land was being maintained on a regular basis.
15. Acquiring the land will give the Council the opportunity to create controlled visitor moorings (i.e. by installing permanent mooring posts at a cost of c. £2,500) to the southern part of the land. This would be done in conjunction with the Environment Agency who have a trial moorings scheme nearby in the area adjacent to East Street. The Environment Agency agreed in principle in extending the trial to the subject land.
16. The income received from these moorings could fund ongoing maintenance works. Based on the rates currently charged by the Environment Agency on their land, the income might be in the region of £3,500 - £4,000 p.a.

Risk Implications

17. A risk assessment has been undertaken and the risk register is attached at Appendix 2.

Environmental and Climate Change Implications

18. The action if approved and successful will help protect the immediate environment and value to the immediate community. It will also help promote responsible boating.

Equalities Implications

19. None arising out of this Report.

Legal Implications

20. Law and Governance advise it is able to claim Title to the land by adverse possession. The application would be determined by the Land Registry.

Conclusion

It is recommended the Board approve the acquisition by adverse possession of the strip of riverside land adjacent to Abbey Road to allow the Council to regularize mooring on this land and to enable limited visitor mooring to the southern section of the acquired land.

Name and contact details of author:-

Name:	Chris Wood
Job title:	Property Manager
Service Area / Department:	Regeneration & Major Projects
Tel:	01865 242120
e-mail:	cwood@oxford.gov.uk

Version number: 1

Appendix 2

CEB Report Risk Register – Acquisition of strip of land adjacent to Abbey Road

No.	Risk Description Link to Corporate Objectives	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid	Monitoring Effectiveness					Current Risk
Risk Score = Almost Certain		Impact Score: 1 = Insignificant; 2 = Minor; 3 = Moderate; 4 = Major; 5 = Catastrophic						Probability Score: 1 = Rare; 2 = Unlikely; 3 = Possible; 4 = Likely; 5 = Almost Certain						
308	CEB-001-CA The claim to acquire the land by adverse possession is unsuccessful	I 4	P 3	A successful application is dependent on the Land Registry agreeing with the Council's case.	The mitigation control will be to work closely with Law and Governance to build a strong case as we are entirely reliant on the decision of the Land Registry.	I 4	P 3	Action: Regeneration & Major Projects to provide Law and Governance with full details of the maintenance works carried out in 1999 and the on-going maintenance work that has occurred since to support the claim for adverse possession. Outcome Required: Successful claim to title by adverse possession.						
	Following a successful adverse possession claim, significant unforeseen repair / renewal works become necessary due to extreme circumstances.	4	3	Unforeseen circumstances such as extreme weather or due to poor condition not identifiable at the time of inspection.	Carrying out of regular and planned maintenance with early action being taken in respect of any damage identified.	4	3	Action: The bank has been inspected and the current condition has been assessed. Regular and planned repair / maintenance work to be carried out. Outcome Required: Planned maintenance programme will prolong the life of the bank reducing the likelihood of major repair / renewal works being required.						

	Estimated income from moorings lower than expected or moorings become non income producing.	4	3	Lack of use of the moorings or the Environment Agency scheme fails.	Ensure the moorings are promoted and used.	4	2	Action: Work closely with Environment Agency to ensure the moorings are promoted and used. Outcome Required: Full and proper use of the moorings is achieved maximising income for the Council.									

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