
10 SOUTH STREET, DUNS

Report by Service Director Regulatory Services

DUNS COMMON GOOD FUND SUB COMMITTEE

3 September 2015

1 PURPOSE AND SUMMARY

- 1.1 This report is to update members of the legal work being carried out in relation to the property known as 10 South Street, Duns.**
- 1.2 In particular, this report details the recent communications between the Council's legal department and the Queens and Lord Treasurer's Remembrancer (QLTR) in relation to the title of the said subjects.
- 1.3 This report also highlights the risks involved with the subjects, and makes recommendations as to how Members should proceed to deal with the property.

2 RECOMMENDATIONS

- 2.1 I recommend that the Committee:**
- (a) considers the implications of the following Report, and agrees to take responsibility for the costs of instructing a survey report of the subjects.**
 - (b) then accepts the Queens and Lord Treasurer's Remembrancer's (QLTR) offer to take title to the subjects known as 10 South Street, Duns.**

3 BACKGROUND

- 2.1 In 2010 the Council commenced the review of the titles for all assets held by the Council in all former burghs to ensure that the asset register was correct in relation to common good matters. The legal officer carrying out the work was supported by estates officers and financial officers in this exercise, which also required examination of some of the former burgh accounts and minutes.
- 2.2 In carrying out the work described above, it became evident that whilst the subjects known as 10 South Street, Duns were commonly believed to be owned by the Common Good Fund, the Council did not in fact hold a registered title for the property. These subjects had been considered by the Sub-Committee previously, and identified as subjects which should be marketed for sale. They are currently in a state of significant disrepair and it has been considered that it would be preferable for the Common Good to sell the subjects, rather than to incur the costs of renovation.
- 2.3 Following this discovery, it was decided that the Council would try to formalise its ownership of the property so that it could sell it. It was believed that this could be done by registering a new deed with the Keeper of the Register, to form the basis for legal prescription to run. Legal prescription is the process by which the passage of time can be used to rectify any historic failings of the Land Register. However, in terms of the Land Registration Act 2012, the Keeper now requires that before any such deed is recorded, the party in question must consult with the Queen's and Lord Treasurer's Remembrancer (the QLTR) who represents the Crown's interest in any abandoned or ownerless property. If the QLTR then claims an interest in such subjects, a title cannot be registered in favour of that party, and accordingly, the subjects cannot be sold.
- 2.4 The Council has been in correspondence with the QLTR since August 2013 and, at her request, the Council has carried out various steps to establish the provenance of the title to these subjects. In particular, the Council has searched historical records for information regarding the last known title holders and their beneficiaries; the Council has advertised in the national press for anyone with a knowledge of these parties; and the Council has contacted all local solicitors firms to seek further information regarding these parties and/or the history of the property.
- 2.5 None of the searches mentioned above have been successful and, as a result, the QLTR has confirmed that she considers the subjects to be 'ownerless' despite the usage of the subjects by the Common Good Fund over the past 75 years. As stated above, this means that the Common Good Fund is unable to formalise a title to the subjects, and unable to sell them on.

- 2.6 The QLTR has advised that she is willing to take over the subjects, with a view to selling them herself. However, the proceeds of any such sale would pass to the Crown, rather than the Common Good Fund. In making this offer, the QLTR has stated her requirement that the Council (or the Common Good Fund) be responsible for the cost of a survey of the property. Any such costs would be repaid to the Council on sale of the property. Having noted the QLTR's suggestion, it is important to note that she has also highlighted that her preference is to act with the agreement of all involved parties. She would be reluctant to take title to the subjects unless the community and the Common Good Fund were in agreement with this course of action.

4. IMPLICATIONS

4.1 Financial

- (a) Should the Committee agree to the QLTR's offer to take title to the subjects, the Committee would be liable for the costs of obtaining a survey report of the subjects. This cost is likely to be in the region of £700. This cost would be recoverable from the QLTR on the eventual sale of the subjects.
- (b) Should the Committee agree to the QLTR's offer to take title to the subjects the Chief Financial Officer, being the s95 officer with responsibility for the keeping of the asset registers, will remove the subjects from the common good register.
- (c) Should the Committee not agree to the QLTR's offer to take title to the subjects, the subjects will not be capable of being sold by the Council on behalf of the Common Good Fund. The Common Good Fund would therefore remain in possession of the subjects and would remain liable for the maintenance of the building, but would not be able to off-set these costs against any future purchase price.

4.2 Risk and Mitigations

The subjects are currently in a state of disrepair. If the Council fails to repair the subjects the Council may be subject to adverse public comments. The risk may be mitigated by either undertaking the repair works, which costs would not be recoverable, or by passing possession of (and therefore responsibility for) the subjects to the QLTR. The sooner any such transfer took place, the sooner the risks would be removed.

4.3 Acting Sustainably

There are no economic, social or environmental effects in accepting or rejecting the recommendation

4.4 Equalities

It is anticipated that there are no adverse equality implications arising from the proposals contained in this report.

4.5 Carbon Management

There are no effects on carbon emissions in accepting or rejecting the recommendation.

4.6 Rural Proofing

This is not a new policy matter.

4.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Council Schemes of Administration or Delegation

5. CONSULTATION

The Chief Financial Officer, the Service Director Regulatory Services, the Service Director Strategy and Policy, Chief Legal Officer, Chief Officer Audit and Risk, Chief Officer Human Resources, Service Director Commercial Services and the Clerk to the Council have been consulted and their respective comments to date have been incorporated into this report and any further comments will be reported at the meeting.

Approved by

Brian Frater

Service Director Regulatory Services

Signature

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Background Papers: Nil

Previous Minute Reference: Nil

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