



# Stanway

## Parish Council

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### **DROUGHT GARDEN – RECOMMENDATION TO COMMUNITY ASSETS (FOR ONWARD RECOMMENDATION TO THE FULL COUNCIL)**

### **CONFIDENTIAL**

It has been unequivocally established that the land on which the Drought Garden stands is not registered in the Parish Council's name. The Land Registry has the site registered in the name of JLG Investments (as of 24<sup>th</sup> June 2020) and that has been the case (according to the Land Registry record) since June 1978.

However, for very many years within the Parish Council, the assumption has been that the land was donated to SPC by the West Family in the early 1990s. There is no evidence to date of a formal document, although informal investigations suggest that the transaction was agreed on a 'handshake'. Since it is unlikely that we can identify any surviving witnesses to that 'transaction', ownership by SPC would be hard, as well as expensive to prove, particularly in a court of law.

Further, the subsequent 2002 Land Registration Act states that registration of land within two months is compulsory. If this is not complied with, then any agreement is void. In other words, if there was no formal agreement registered between SPC and JLG two months after that enactment, then any prior agreement, 'handshake' or otherwise, would have been deemed never to have taken place.

The (lack of) ownership issue is further supported by the fact that, on sample-checking the Parish Council's Asset Register in earlier years (2004, 2010 and 2016), at no time has the Drought Garden been listed as a land asset by the Council itself. Finally, a special search of the Land Registry records was conducted in December 2019 to identify all land assets within the Parish. Once again, no record of ownership of the Drought Garden was found.

As advised before, the only legal record in SPC's name is the "Deed of Dedication" for the footpath mentioned in the LR document. The 1991 Deed of Dedication gave the right of free passage for a public footpath from Villa Road through to the rear of the plot (now Tollgate East) and placed the responsibility for its maintenance with the Parish Council. It did not transfer ownership. It may be that this event 30 years ago has led to incorrect assumptions over the actual ownership of the land.

It remains that the Parish Council has received a proposal from JLG Investments (a West Family company) to take back a large part of that land, (see diagram below), for probable use as an extension to the carpark behind the row of shops on Villa Road. This would leave the footpath and (possibly) two small areas in the southwest corner (coloured yellow and blue) under the Council's responsibility.

Clearly, if SPC's ownership cannot legally be proved, JLG Investments could simply repossess the land without offering any compensation. The company could also ask for the site to be cleared/returned to its previous condition at the Parish Council's expense. However, it has been suggested by their agent that JLG may be prepared to pay for re-landscaping and perhaps other costs. This, of course, is subject to formal (and legal) agreement. This is a summary of their proposal:

*After further review with the Directors of JLG Investments their thoughts are that if JLG are to take back the garden area, it should be on the following basis:*

- To remove the park / seating area, with a view of creating additional car parking. The additional car parking will be of use to everyone not just the tenants and will continue to be used by the school mums for pick up/drop off.
- Create a suitable walkway approximately 2m in width which runs from the back of the retail park and hugs the side of the land which runs along the side of the Gas power supply while also fencing off the small grass/hidden area.

JLG remain concerned that should there be any form of seating/garden area however large or small, it will continue to attract the current antisocial behaviour problems. The question is whether the seating/garden area is of more benefit to the locality rather than additional parking.

### Recommendation

After careful consideration of the legal, the financial and the other aspects of this matter by your officers, they recommend the following:

1. That the land should be returned to JLG per their request (subject to 3 below), with the blue hatched area to become a car park to serve local needs, **and**
2. That the green and yellow areas are fenced off to become a 'wildlife' area, with gated access to maintain it, **and**
3. That a counter proposal is made to JLG Investments that the remaining 'walkway' (in red) is enlarged to accommodate foot and cycle traffic using appropriate safety measures, based on the diagram provided below, with low level planting acting as a natural divide. This would fit in well with the Colchester Borough Council Stanway / Tollgate Links strategy.

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