

**NORTH LANARKSHIRE COUNCIL  
REPORT**

To: <b>POLICY AND RESOURCES (PROPERTY) SUBCOMMITTEE</b>		Subject:  <b>ASSET MANAGEMENT PLAN - POLICY ON GRANTING WAYLEAVES</b>
From: <b>HEAD OF PROPERTY SERVICES</b>		
Date: <b>13 May 2011</b>	Ref: <b>CB/FF</b>	

**1. INTRODUCTION**

- 1.1 The purpose of this report is to inform Committee on issues relating to Wayleaves over NLC land and to seek Committee approval to this Wayleave policy document.
- 1.2 Property Services are continuously reviewing working practices in the light of Best Value. The granting of Wayleaves to Utility Companies providing electricity and telecom supplies presents a challenge for the reasons set out below. This report explains the challenges, puts forward a Wayleave Policy document to clearly define the current process and proposes a longer term strategy to ensure Best Value when granting Wayleaves to Utility Companies.

**2. BACKGROUND**

- 2.1 Wayleaves are similar to leases. The Council is approached to grant a legal right over its land which may take the form of a pedestrian right of way, vehicular access, underground ducting for an electrical cable, telephone line over land, and the route of an electric pylon or for other similar purposes. This is formalised in a Wayleave document which both parties sign and a rent is paid to the Council.
- 2.2 The granting of Wayleaves is a necessary function of the Council as it allows the normal day to day running of utilities across North Lanarkshire, assisting with economic regeneration and development. It also allows the Council's own projects to be carried out and completed, in particular the development of Council housing schemes, schools and other projects.
- 2.3 The Head of Property Services has the delegated authority to grant Wayleaves and this has been Council practice for a considerable period. Under this authority, Property Services regularly grants Wayleaves to utility suppliers, most commonly to Scottish Power and British Telecom to run their service supply over Council land. Property Services occasionally grants other bodies Wayleaves for purposes of access.
- 2.4 Failure to grant Wayleaves to Utility Companies for sites across North Lanarkshire would have a consequential impact on Council developments.

### **3. CHALLENGES**

3.1 There are particular problems associated with Best Value in granting Wayleaves to the Electricity Company, Scottish Power. Historically, the South of Scotland Electricity Board (SSEB) constructed its infrastructure for the national benefit, and legislation and working practices evolved to support this. There has been little change to the nature of the legislation or working practices since privatisation and Scottish Power (the SSEB's successors) have continued to operate in a similar vein. In the past, it may have been acceptable for one public body to pass property assets to the other at minimal cost, however the nature of the transaction has changed and a review of the implications shall be addressed.

3.2 The two main issues relevant to the grant of Wayleaves are:-

i Permanence of the Wayleave

Wayleaves granted to Electricity Companies are primarily to allow them to site or relocate their electrical distribution cables. Under the terms of the Electricity Act 1989, once a Wayleave is granted, the Electricity Companies have security of tenure for as long as they require. This can sterilise areas of Council land, and in practical terms has the same effect that a long ground lease would have.

ii Rental Levels below Market Value

Rental payments for Wayleaves are not necessarily based on the market rental for the locality, but are agreed between the Electricity Industry and the National Farmers Union on an agricultural basis. The Agreement forms a method of valuation that is applied across the UK and is strictly adhered to by all Electricity Companies.

The majority of Wayleaves granted to Scottish Power, by the Council, are for areas of urban land, but are valued at negligible sums under the Electricity Wayleave Payment Agreement. For example; an annual payment for a 100 metre underground cable (200 square metres of land) would be £2.10 per annum. This compares with a commercial approach, where an annual rent based on land values for the same area of ground could easily be in the order of £500 to £1,000 per annum. Clearly, there is a significant question over the current basis of valuation and whether the Council is being properly recompensed for the loss and sterilisation of its assets and, on this basis, whether the current approach represents Best Value to the Council.

3.3 Over the course of the last year, Property Services have been attempting to challenge Scottish Power's assessment of Wayleave payments over a series of meetings and discussions but has only resulted in an impasse on the problem and often a stagnation of the process.

3.4 Property Services therefore wish to set out a clear Wayleave policy, as detailed in Section 4 and at Appendix 1 to manage the current demands on the Service, and are then seeking to challenge the payments made for Electricity Wayleaves.

- 3.5 The Electricity Companies can request from the Scottish Government that a CPO be implemented to deal with a Wayleave situation, however, the power has never to our knowledge been used. Part of the reason for this is the time involved in the CPO process which would delay the investment in North Lanarkshire resulting in a potential loss of investment.

#### **4. WAYLEAVES POLICY**

- 4.1 Property Services recognises that the current Wayleave payments made to the Council by Electricity Companies under the Electricity Wayleave Payment Agreement may not always reflect the market value of land rights acquired from the Council, and therefore meet the requirements of Best Value.
- 4.2 The Council shall seek to pursue a review of the approach to Electricity Wayleave payments for urban areas.
- 4.3 The policy set out in Appendix 1 outlines the current processes for granting of Wayleaves, detailing the circumstances where open market rental and Wayleave Agreement payments are appropriate. It is proposed this policy shall continue to be adopted until after any review on the level of payments for Electricity Wayleaves is completed, at which time a revised policy shall be put forward to the Sub-Committee.
- 4.4 There are similar issues with Telecommunication Wayleaves, however very few applications for Wayleaves are made annually, and the nature of their infrastructure allows far greater flexibility in the movement and removal of the equipment. It would be intended that any issues relating to telecommunications be addressed after the far more numerous and problematic issues of Electricity Wayleaves have been resolved.
- 4.5 The policy does not include servitude rights as this will be the subject of a separate review and a revised policy.

#### **5. CORPORATE CONSIDERATIONS**

- 5.1 This policy is in accordance with the aims and objectives of the Council in seeking to protect the assets of the Council and ensure Best Value.
- 5.2 It is considered good estate management practice to set out a clear procedure document for the guidance of Council staff, members, partners and other interested parties and ensure consistency of approach.
- 5.3 This policy and procedure sets out a way forward to seek a review but in the meantime allows for the adoption of an interim policy.

**6. RECOMMENDATIONS**

- 6.1 The Council shall adopt the Wayleave Policy attached as Appendix 1.
- 6.2 The Council notes the position.



**IAN NISBET**  
**Head of Property Services**

Members seeking further information on the contents of this report are asked to contact Ian Nisbet, Head of Property Services, on 01236 616305.

## 1.0 Introduction

- 1.1 This document is produced as a result of a recent review of current practices and policies relating to the granting of wayleaves and aims to produce one comprehensive document outlining the Council's policy relating to this matter.
- 1.2 The policy also recognises the current statutory provisions relating to the granting of wayleaves for the purposes of electrical and telecommunication supplies.

## 2.0 General

- 2.1 When a party applies to the Council with a request for a wayleave, depending on the nature of the wayleave and the benefits to the Council/wider community, it shall initially be determined whether the wayleave is to be treated on a Market Basis or on a National Agreement Basis. The National Agreement Basis only applies to electricity and telecommunications wayleaves and shall not be used for any other purposes.
- 2.2 Following a request for a wayleave and before it can be progressed, ownership by the Council must be established and the holding Service identified. Property Services will undertake this consultation, seeking advice from Legal Services if required.
- 2.3 If ownership is established, Property Services will contact the holding Service to ascertain their views on the wayleave request and proposed route. If required, Property Services will refuse the wayleave, or in the case of a utility company where this may not be possible, seek to vary the route of the wayleave to the holding Service's satisfaction.
- 2.4 As part of the consultation process, Property Services will also contact Housing, Planning and Roads Services, and other Services as appropriate to establish if the proposed wayleave will impact on their future proposals.
- 2.5 Property Services will always consider the impact that a wayleave request will have on the Council's property assets and any future or potential development prospects and seek to mitigate this through negotiation.
- 2.6 It is possible that under the terms of 'Disposal of Land by Local Authorities (Scotland) Regulations 2010', the Council may decide to grant a wayleave at less than market value where the proposal is considered to meet the prescribed requirements of the regulations. This policy anticipates that possibility and would allow it to take place if required.

## 3.0 Basis of Granting a Wayleave

- 3.1 The vast majority of wayleaves are to electricity and telecommunication companies but other parties may require wayleaves for a variety of purposes. This section of the policy explains granting a wayleave on a Market Basis or on a National Agreement Basis to Companies such as Scottish Power, British Telecoms or their agents.

## **3.2 Market Basis**

3.2.1 All wayleaves will be assumed to be offered on a market basis and applicants will be required to satisfy the tests set out in paragraph 3.3 before they can be considered for the granting of a wayleave which benefits from the National Agreement Basis.

3.2.2 All Market Basis wayleaves will be granted in accordance with Best Value, although they may be considered eligible under the terms of 'Disposal of Land by Local Authorities (Scotland) Regulations 2010' if appropriate.

3.2.3 The annual charge for the wayleave will be calculated with regard to the Market Value of the site, but may be adjusted to take account of the following:-

- i. The degree of exclusive control/sterilisation of remaining land
- ii. Ongoing maintenance to be carried out by the applicant

3.2.4 All wayleaves granted under the Market Basis will be clearly documented, and will be able to demonstrate that they were granted in accordance with Best Value at that time.

## **3.3 National Agreement Basis**

3.3.1 In situations where the wayleave is required for Council activities, upgrading of infrastructure to wider Council areas and for wider community use, it may be more appropriate to operate the National Agreement Basis. Account will also be taken of the effect that the wayleave has on the area of land burdened by the wayleave and a market value approval may be appropriate.

3.3.2 As set out in paragraph 2.1, applicants will be required to clearly identify that they are requesting a wayleave on this basis and prove to Property Services in each instance that the wayleave should be valued on the National Agreement Basis, as detailed above.

3.3.3 The categories of applicant that Property Services will accept as able to request a wayleave on a National Agreement Basis are as follows:-

- i. Electricity Utility Company
- ii. Agent for an Electricity Utility Company
- iii. Subcontractor to an Electricity Utility Company
- iv. Telecommunications Company
- v. Agent for a Telecommunications Company
- vi. Subcontractor to a Telecommunications Company
- vii. Gas Utility Company
- viii. Agent for a Gas Utility Company

- ix. Subcontractor to a Gas Utility Company
- x. Scottish Water
- xi. Agents for Scottish Water
- xii. Subcontractors to Scottish Water

3.3.4 A register of all wayleaves granted by the Council will be maintained.

#### **4.0 Completion of Wayleaves**

- 4.1 Under existing delegated authority, the Head of Property Services is authorised to grant wayleaves over Council property.
- 4.2 Property Services reserves the right to charge a fee to applicants for the provision of this service, which will be subject to Committee approval.
- 4.3 An electronic register of all new wayleaves shall be maintained.
- 4.4 The granting of all wayleaves will be in accordance with the policy set out above.