

Report to the Cabinet

Report reference: C-005-2014/15

Date of meeting: 23 June 2014



**Epping Forest
District Council**

Portfolio: Asset Management & Economic Development

Subject: Property Disposal - Lindsay House, 15 Lindsey Street, Epping

Responsible Officer: Mark Scott (01992 564407)

Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

- (1) That the Cabinet agrees in principle that the Council's freehold interest in Lindsay House be sold on the open market;**
- (2) That a marketing exercise, including an invitation to offer from the Theydon Trust, be carried out inviting bids based on:
 - (a) Sale as a single dwelling house; and**
 - (b) Conversion to flats;****
- (3) That the Portfolio Holder be authorised to:
 - (a) To consider the results of the marketing exercise and determine the basis on which the property is to be sold against the covenant restricting use of Lindsay House for a single dwelling house or home for elderly persons;**
 - (b) In the light of the offers received to consider if there would be financial benefit to the Council in seeking to remove the covenant and then remarket the property; and**
 - (c) Subject to (b) approve the highest offer received for the property or seek to remove the covenant.****

Executive Summary:

The Abbeyfield (Epping) Society has surrendered their lease of Lindsay House as it was surplus to their requirements and they were unable to assign the lease due the restrictive user clause. There is current interest from the Theydon Trust to use the property as a house for elderly persons with the addition of social housing. The property could be suitable to conversion to flats. However there are covenants restricting use to a single dwelling house or a home for elderly persons.

Reasons for Proposed Decision:

To receive a valuable capital receipt.

Other Options for Action:

To seek a new tenant within the restrictive user clause permitted by the covenants.

Report:

1. Lindsay House, 15 Lindsey Street, Epping, shown by black verge on the plan, comprises a site area of 0.17 acres. It was the former Manse of the Epping Congregational Church purchased by Epping UDC 1972, under Housing Act powers, to provide sheltered housing accommodation for the elderly. The house originally comprised seven bedsits, plus a two bedroom flat for a resident warden, and communal lounge/dining room, kitchen, bathroom and toilets. In 1978 the District Council concluded it was too expensive to run as sheltered accommodation and options for its disposal were considered.
2. In 1981 the Council entered into a 50 year Management Agreement with the Abbeyfield (Epping) Society, a registered housing association. In 1997 the Society concluded that the premises did not meet modern standards and wanted to undertake improvements. To achieve this they would be required to purchase the freehold or be granted a long lease.
3. The Council granted a 125 year lease from 21 August 1998 as this would enable a greater degree of control by the Council than could be achieved following freehold disposal. The lease was granted subject to the Society:
 - (a) Undertaking the £ 200,000 cost of improvements. The Council provided a £75,000 grant towards the cost of the works. These comprised the provision of an additional bedsit, a lift, provision of ensuite toilet and wash hand basin in each room. It was not possible to include ensuite baths / showers due to lack of space;
 - (b) The use restricted to sheltered housing for elderly persons;
 - (c) The council receiving at least 75% nomination rights;
 - (d) The lease to be on full repairing and insuring terms; and
 - (e) Assignment permitted subject to the Council's consent, such consent not to be unreasonably withheld.
4. In 2011 the Society approached the Council asking if it had any views on the future use of Lindsay House or whether it would like to take the property back into its management.
5. The matter was discussed by Management Board and it was not felt the building would be suitable for Council use as general needs accommodation, unless the bedsits were converted into self-contained flats, which would be very expensive. Views were sought on taking a surrender of the property to The National Association for the Care and Rehabilitation of Offenders (NACRO) for homeless single person's accommodation.
6. At this meeting the potential for selling the building for the building with planning permission for, for say 6 self contained flats (plus the existing) rather than for it's for its existing use or as a single dwelling was discussed. Subsequent planning advice was that there conversion to a small number of flats or a single dwelling house may be possible subject to planning consideration. Conversion to a larger number of units may be difficult as there would be a requirement to provide a parking space for each bedroom in the scheme. Additionally it is not an area where flats are common so could result in objections on harm to the character of the area.
7. However, the Council's title is subject to the following restrictive covenants.
8. Conveyance dated 17 April 1906 – When the Epping UDC purchased the property no copy of the covenants was supplied. Due to the age of the covenants and uncertainty of the beneficiary, insurance cover could be purchased in the event of any claims.

9. Conveyance dated 25 August 1972 – This conveyance restricted the use of the property. This clause was varied in 1998 whereby the Council covenanted with the London Congregational Union (Incorporated) that it and its successors in title shall not use the property for any purpose other than as a single private dwelling house or as a house for elderly persons. This covenant is enforceable by the church and if the Council wishes to change the use of Lindsay House to, for example, flats it would have to seek the agreement of the church, consider insurance or apply to the Upper Tribunal for the covenant to be released.

10. If the church does not agree to release the covenant it is unlikely that insurance cover would be given. Insurance is usually given when a covenant is old and the beneficiary is unknown.

11. If an application were to be made to the Upper Tribunal to release the covenants the Council would have to prove either:

- the covenant is obsolete;
- it prevents reasonable use of land;
- the express or implied consent of the person who has the benefit has been obtained; or
- the person with benefit will not be injured by discharge or modification of the covenant.

The current beneficiary of the covenant is The Epping United Reform Church and their new manse adjacent to the property.

12. The tribunal may only authorise the discharge or modification of a restriction on the ground that it impedes the reasonable user of the land if the Tribunal is satisfied that the restriction, in impeding other uses, and either:

- does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them; or
- is contrary to the public interest;

and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification. In making its decision the Tribunal will take into account the Development Plan and any planning permissions granted in the area.

13. If the Tribunal decides that the covenant can be released or modified it may order that compensation be paid under one of the following:

- (i) a sum to make up for any loss or disadvantage suffered by the beneficiary of the covenant in consequence of its discharge or modification; or
- (ii) a sum to make up for any effect which the restriction had, at the time when it was imposed, in reducing the consideration then received for the land affected by it.

14. Accordingly the extra capital receipt achievable from conversion to flats may be negated by the compensation payable in order to release the covenant.

15. The property has been vacant for some years whilst the Society attempted to find an assignee that could comply with the restrictive user clause in the lease. They were not successful and finally surrendered their lease in January 2014 thus leaving the Council free to decide the future of the property. They also paid the Council £7,002 in lieu of final external dilapidations. Internal dilapidations were not applicable in this instance as the property was not going to be restored to the existing use.

16. There is current expression of interest from the Theydon Trust to use the property for the existing use with the addition of social housing.

Resource Implications:

Finance

Capital receipt for sale of Lindsay House, either as a single dwelling house or flats.
£ 800,000 capital value.

Personnel

Valuation and Estate Management Service
Legal Services

Land

Nil.

Legal and Governance Implications:

Section 123 Local Government Act 1972 – best consideration for the land and property assets.
Consent is given for sale of land (covenants are deemed to be a sale for this purpose).

Safer, Cleaner and Greener Implications:

Residential accommodation refurbished to modern standards will result.

Consultation Undertaken:

None.

Background Papers:

None.

Impact Assessments:

Risk Management

Loss of capital receipt and failure to bring vacant property into use.

Equality and Diversity:

No equality issues.

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties; reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A