

## **Report to the Cabinet**



**Report reference:** C-018-2015/16  
**Date of meeting:** 23 July 2015

**Epping Forest  
District Council**

**Portfolio:** Governance and Development Management  
**Subject:** Release of Restrictive Covenants – Epping Forest College  
**Responsible Officer:** Derek Macnab (01992 564050).  
**Democratic Services:** Gary Woodhall (01992 564470).

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### **Recommendations/Decisions Required:**

- (1) That the Council issues a Deed of Release of the 1952 and 1955 Covenants, consistent with the previous Deeds of Release, on the land at Epping Forest College, on the basis as outlined in paragraph 11 of the report; and
- (2) That the Council does not exercise its pre-emption rights on the land.

### **Executive Summary:**

The Council has received a submission from the Solicitors to Epping Forest College, seeking the release and/or modification of two restrictive Covenants and a right of pre-emption in favour of the Council, which currently binds the Colleges Estate. In summary, the release of the Covenants is requested to enable the College to fulfil the aspirations of their accommodation strategy, namely, to invest in new educational and public/community well-being facilities. The College suggest that by allowing surplus land to be sold for residential development (which would include affordable housing), this would generate capital to be utilised in the provision of further enhanced educational facilities and a new sports centre, for use by both college students and the local community. This would serve to compensate for the loss of the Debden Community Association Sports Centre and meet a deficiency in indoor dry sports provision identified in the Council's adopted Leisure and Cultural Strategy.

### **Reasons for Proposed Decision:**

The Council has previously released restrictive Covenants at the Epping Forest College site, to facilitate residential development, a residential care home, and the provision of student accommodation. On these occasions, it was to generate funds to facilitate further educational provision and stabilise the College's financial position. This report seeks Members' consideration of such a further request.

### **Other Options for Action:**

To not consider the release of the Covenants and allow the matter to be referred by the College to the Land Tribunal. In this circumstance, based on previous advice obtained by the Council from Chartered Surveyors, Montague Evans in 1998, it would be likely that the tribunal would agree to the release. Alternatively, the Council could exercise its pre-emption rights on any piece of land and seek to develop the site/s for its own Council Housebuilding

programme.

This would require the Council to purchase at market value. However, any residential scheme, promoted by the College, would in all likelihood involve an element of affordable housing in accordance with current Council Policy.

**Report:**

1. In late 2014, the Council received a detailed submission from the Solicitors to Epping Forest College, seeking the Council's agreement to the release and/or modification of certain Covenants, which directly restrict or prevent the sale and development of the College's land for purposes other than public education or public health. The request is to enable the final phase of the College's Campus rationalisation programme to be implemented.

2. The wording of the existing Covenants is set out in full in the College's submission, however, the overall effect is that the whole of the original estate of the former Loughton Technical College, is constrained by:

(a) a restrictive covenant prohibiting uses "other than for the purposes of the Education Act 1944 and/or the National Health Services Act 1946" in the case of the land coloured pink, blue and mauve on Plan A and the land edged red on Plan B or in the case of the land coloured yellow on Plan A "the Education Act 1944 or other approved County service" (Plan Attached);

(b) a restrictive covenant prohibiting the erection of any buildings on the land "except in accordance with the layout and site plans first submitted to and approved by the Council"; and

(c) a right of the first refusal which prohibits the sale of the land "without first offering it for sale to the Council", which offer the Council may accept within 3 months for a price based upon CPO compensation formulae.

3. Historically, in 1952 and 1955, all of these Covenants were expressed to be in favour of the former London County Council, before transferring to the Greater London Council upon the LLC being subsumed into the GLC in 1963; then, upon the GLC's abolition in 1986, the benefit of the Covenants transferred to the Council.

4. Since 2005, the College has adopted a strategy of rationalisation of its estate, from the original 35 acres. As such, it has disposed of a number of assets, namely:

(i) in 2007, the College sold its Upper Site (10 acres) in two phases to Redrow Homes for housing development;

(ii) in 2008, the College sold Loughton Hall for redevelopment as secure accommodation for older people, on terms which obliged Redrow (as part of the price of purchase of the Upper Site) to refurbish the exterior of this listed building to a high standard. That development is now complete;

(iii) in 2010, the College sold surplus car park land to University of Essex for redevelopment as student accommodation; and

(iv) in 2011, the College sold Loughton Sports Hall to a specialist care home developer/manager, Loughton Care Centre Limited.

5. It can be seen from the College's latest submission, that the estate rationalisation

programme was designed to deliver two key objectives, firstly to bring about the improvement and modernisation of the College's facilities to modern educational and vocational training purposes, and secondly, to stabilise the College's financial position. This culminated in the provision of the new Campus on the Lower Site, completed in August 2008 at a cost of nearly £40million.

6. The College, having now achieved their strategic objectives, are now operating out of a Campus which is space-efficient, economical, environmentally sustainable and attractive to students. The substantial capital receipts generated by the disposals have funded the new investments in buildings and facilities and reinforced the College's medium to long term financial condition.

7. The Council has been supportive of the College's previous requests for Deeds of release of the Covenants in order to allow the disposal of the Upper Site, Loughton Hall the former Loughton Debden Sports Hall and Car Park land.

8. The College now seeks the Council's further support with regard to the Middle Site and the Playing Fields, i.e. those remaining parcels of College land which are unused and, for the most part, surplus to requirements. This is in order to fund the College's procurement or a new high quality sports and well-being facility for the benefit of the community, as well as a release of area around the footpath between Borders Lane and Rectory Lane up to the area that borders land owned by Rubyrose, specialist care home developer to enhance the amenity of that area of land.

9. In support of their request to release the Covenants, the College argue that by allowing surplus land to be sold for new housing to include an affordable element, (subject to planning permission), would outweigh the benefits of retention. In addition, they suggest that substantial additional community benefit will also be delivered by further enhanced educational and leisure facilities, available to both students and the local community. The Council's Leisure and Cultural Strategy adopted in December 2014, identified a need for additional indoor sports provision in the South of the District, and supported in principle, potential new-dual use facilities at the College. This would help compensate for the loss of the Debden Community Association Sports Centre, which was closed as part of an earlier redevelopment. At this time, the College gave an undertaking in writing, that when funds became available, they would seek to make replacement indoor sports provision available. In addition, the College have also suggested that subject to further consultation, other recreational facilities could be provided and made accessible to local residents, namely, an all weather playing pitch, outdoor basketball courts and a children's play area. The release of the Covenants could also facilitate the rationalisation of the boundaries between the College land and the adjacent residential care facilities, with the land upgraded and its amenity value approved.

10. With respect to the right of first refusal for the Council to purchase the land, there has been no operational need identified for the land with respect to Council Services. In addition, the Council is already exploring the facility of construction of a new Leisure facility to replace the Swimming Pool in Waltham Abbey, and has no stated intention of funding a second. Finally, any residential development which achieved a planning permission, would contain an element of affordable housing, helping to address housing need. For these reasons, it is recommended that the Council does not exercise its pre-emption rights.

11. As with previous requests to release Covenants on the College site, the applicants acknowledge that in the case of the disposal of the Middle Site for residential purposes and the development of the playing fields for sports and education use, the Council would not be minded to issue a Deed of Release until evidence is obtained that the purchasers would complete. To this end, the College's Solicitors are proposing the following recommendation:

*“A Deed of Release of the 1952 and 1955 Covenants consistent with the previous deeds of release is executed by the Council and is held in escrow pending written confirmation from the College’s Solicitors to the Council that (i) the College’s application for [outline] planning permission for the development of its new Sports, Health and Well-Being facility for the benefit of the College’s students and the wider community has been submitted to the Council’ and (ii) Contracts for the College’s sale of the Middle Site and part of the Playing Fields for residential development, conditional upon execution of such Deed of Release of the 1952 and 1955 Covenants, have been signed and are held in escrow pending execution and delivery of the said Deed of Release.”*

12. Members are asked to consider the release of the Covenants to facilitate wider community and educational benefits.

### **Resource Implications**

The Council has previously released the Covenants on the 10.3 acres of land on the Upper Site at no cost, on the basis that the Covenant was largely obsolete and, as such, of little value given the prospect of the Land Tribunal deeming it such. The same considerations apply with respect to this further release.

### **Legal and Governance Implications:**

The Covenants are outlined in paragraph 2 of the report.

### **Safer, Cleaner and Greener Implications:**

Any new buildings constructed would be to the requirements of modern Building Regulations with respect to energy efficiency. New community sports facilities would be a positive opportunity for local young people with a potential reduction in anti-social behaviour.

### **Consultation Undertaken:**

Nil.

### **Background Papers:**

Previous decision of Council to release Covenants on the site.

### **Risk Management:**

No specific risks identified.

# Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

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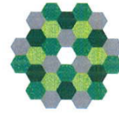
There are no specific equalities implications in terms of the release of the Covenants. Any replacement community sports and educational facilities provided as part of the next stage of delivery of the College's Accreditation Strategy would be accessible to all members of the public.



PLAN B

Land Registry  
Official copy of  
title plan

Title number **EX850602**  
Ordnance Survey map reference **TQ4396SE**  
Scale **1:1250**  
Administrative area **Essex : Epping Forest**



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