

Report to Overview & Scrutiny Committee

Date of meeting: 5 January 2016

Portfolio: Governance and Development Management

Subject: Call in – Release of Restrictive Covenants on Land at Epping Forest College Loughton



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Committee Secretary: Adrian Hendry (Ext 4246)

Recommendations/Decisions Required:

To consider the call-in of Cabinet decision C-018-2015/16 that the Council issue a Deed of Release of the 1952 and 1955 Covenants, consistent with the previous Deed of Release, on the land at Epping Forest College.

Report:

1. In accordance with rule 20 of the Overview and Scrutiny Rules, 6 members have called in the Cabinet's decision, taken on 5 November 2015 and published on 13 November 2015. The decision (see decision sheet extract attached) being called-in is:

(1) *That a Deed of Release of the 1952 and 1955 Covenants be issued by the Council, consistent with the previous Deeds of Release on the land at Epping Forest College, on the following basis:*

(a) *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; and*

(2) *That the pre-emption rights of the Council not be exercised on the land.*

2. The Call-in was based on the following premises, that:

- 1) *The covenants were imposed by the London County Council to protect an adequate supply of land for educational and NHS use in the vicinity of the residential development they had undertaken.*
- 2) *That need remains valid today.*

- 3) *ECC projections of rising 5s, plus the factors of extensive EFDC council house building and of continuing in-migration, imply a new school will be needed in 7-10 years.*
- 4) *There is no suitable spare land in Loughton on which a new school could be built.*
- 5) *Therefore this land, use of which was restricted for the needs of the then LEA (and NHS), should continue to be protected by covenant, for its original purpose.*

3. In accordance with the protocol developed as part of the most recent review of the Council's overview and scrutiny arrangements, the lead signatory to the call-in or the relevant Portfolio Holder, requested a meeting with the Chairman of the Overview and Scrutiny Committee prior to the call-in being considered by the Committee, to consider whether opportunities existed for the withdrawal or modification of the call-in. Such meeting was held on 3 December 2015 between two signatories to the call-in, the Governance and Development Management Portfolio Holder and the Chairman of the Committee, to discuss the possibility of reaching agreement on removing the objections to the decision. The meeting agreed that no middle way could be found and that the call-in should be presented to the Committee for a wider debate.

4. The Chairman of the Overview and Scrutiny Committee determined that consideration of the call-in should be referred to this meeting of the Overview and Scrutiny Committee.

5. Attached to this report are:

- (a) Copy of the report;
- (b) An extract from the decision list;
- (c) A copy of the notification of the call in including the names of the relevant Councillors who requested the call in and their grounds for so doing; and
- (d) A copy of an extract of the Council's procedures for dealing with call-ins.

Consideration of the Call-in

6. In accordance with the Council's Protocol (attached) the consideration of call-ins by the Committee should be considered in the following manner:

- (a) the representative of the Councillors calling in the decision shall describe their concerns;
- (b) the Portfolio Holder shall then respond;
- (c) the Overview and Scrutiny Committee or delegated Panel will then debate the issues involved. The Chairman of the meeting shall have the discretion to vary the way in which evidence is gathered including speakers and public participation if appropriate but shall seek a response from the initiating Councillor(s) and the Portfolio Holder before formulating its recommendations;
- (d) The Overview and Scrutiny Committee or delegated Panel has the following options:
 - (i) confirm the decision, which may then be implemented immediately; or
 - (ii) refer the decision back to the decision taker for further consideration setting out in writing the nature of its concerns; or

- (iii) refer the matter to full Council in the event that the Committee or Panel considers the decision to be contrary to the policy framework of the Council or contrary to, or not wholly in accordance with, the budget.

(e) If it appears that the review of a decision of the Executive cannot be completed at one meeting, the Executive or decision taker will be informed, indicating any preliminary views the Committee or Panel may have and a proposed timescale for the completion of the review. The Chairman of the Overview and Scrutiny Committee/Panel shall, if necessary, consult with the Leader of the Council regarding the urgency of the proposed decision or any other related matter;

(f) The Chairman of the Overview and Scrutiny Committee or delegated Panel shall sum up the recommendations to be submitted to the Executive and these shall be incorporated in full in the Minutes or report of the meeting;

(g) In cases where the Overview and Scrutiny Committee or delegated Panel determines that a review of the decision is not justified or that, having reviewed the decision of the Executive, it has no adverse comment to make, the Committee or Panel shall ensure that its decision is published in the Members' Bulletin;

(h) In the circumstances outlined in (g) above, the decision of the Executive or Decision Taker may be implemented with effect from the date of that meeting;

(i) A report detailing any appropriate recommendations of the Overview and Scrutiny Committee or delegated Panel shall be reported to the Decision Taker

(j) In presenting the recommendations of the Overview and Scrutiny Committee or delegated Panel, the Chairman may make general comments on the Committee's / Panel's recommendations, answer questions and respond to comments or new proposals made by the Executive at that meeting; and

(k) The report of the Overview and Scrutiny Committee or delegated Panel shall be sent in draft to all its Members for approval prior to their submission to the Decision Taker.

(l) Minority reports may be made by members of Overview and Scrutiny Committee or delegated Panel in accordance with the Protocol for that purpose.

7. If, having considered the decision, the Overview and Scrutiny Committee or delegated Panel is still concerned about it, then it may, subject to the procedures outlined in Rule 16(a) or (b) in attached, refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to full Council. If referred to the decision maker they shall then reconsider within a further 5 working days, or in the case of a Cabinet decision, as soon as practically possible amending the decision or not, before adopting a final decision.

8. If the matter was referred to full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, it has no power to make decisions in respect of an executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision-making person or body, together with the Council's views on the decision. That decision-making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Executive as a whole or a committee of it, a meeting will be convened to reconsider within 14 working days of the

Council request. Where the decision was made by an individual, the individual will reconsider within 14 working days of the Council request.

9. If the Council does not meet, or if it does but does not refer the decision back to the decision-making body or person, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.

10. The Committee are asked to consider the decision taken by the Cabinet and report accordingly.