

Report to the Cabinet

Report reference: C-006-2011/12

Date of meeting: 6 June 2011



**Epping Forest
District Council**

Portfolio: Finance and Economic Development

Subject: The Grant of Approval to Development Works on Land owned by Epping Forest College, Loughton.

**Responsible Officer: Mark Scott (01992 564407)
Rosaline Ferreira (01992 564009)**

Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

(1) That approval of the Council be given as landowner of the adjoining lands pursuant to the restrictive covenant in paragraph (b) of the Third Schedule of a Conveyance dated 1 May 1952 to a scheme of works to be carried out on land known as the former Loughton Sports Hall ('the Sports Hall') shown by a black verge on the attached plan; and

(2) That authority be delegated to the Director of Corporate Support Services for the exercising of the Council's discretion in its capacity as landowner of the adjoining lands to which the benefit of the covenants is attached to give approval to the scheme of redevelopment works for the Sports Hall in accordance with Planning Decision No. EPF/2439/10.

Executive Summary:

The Council at its meeting of 28 September 2010 agreed with regard to the Sports Hall to the release of covenant (a) which restricted use in return for a side letter or words in the deed of release with respect of the College providing replacement sports facilities when their funding situation allows and covenant (c) which related to the right of pre-emption. The Deed of Release of Covenants and Side Letter have been agreed but are yet to be completed. The College are now requesting the Council's formal consent in accordance with the restrictive covenant in paragraph (b) of the Third Schedule of the Conveyance dated 1 May 1952 to a scheme of works to be carried out on the Sports Hall.

Reasons for Proposed Decision:

To give consent as landowner of the adjoining lands to which the benefit of the covenants is attached to the scheme of works to be carried out in accordance with Planning Decision No. EPF/2439/10 once it has been formally granted.

Other Options for Action:

To not agree to give consent as landowner of the adjoining lands to which the benefit of the covenants is attached.

Report:

1. The Epping Forest College site was transferred by a Conveyance dated 1 May 1952

(‘the Conveyance’) to Essex County Council (ECC) by the then London County Council (LCC). Through local government reorganisations the Epping Forest District Council now have the benefit of restrictive covenants (a) and (b) and the right of pre-emption (c) mentioned in the Third Schedule of the Conveyance an extract of which is contained in paragraph 2 below. The College is bound by the restrictive covenants and right of pre-emption unless the same have been released and/or varied or approval is obtained.

2. The two restrictive covenants and the right of pre-emption mentioned in the Conveyance are set out below:

(a) Not without the previous consent of the Council to use or allow to be used the Land hereby conveyed or any part thereof for any purpose other than for the purposes of the Education Act 1944 and/or the National Health Services Act 1946.

(b) Not to erect any buildings on the land hereby conveyed or any part thereof except in accordance with layout and site plans first submitted to and approved by the Council but as regards elevational treatment this is not to be subject to approval but the Council are to be given an opportunity as Vendors and adjoining owners of examining the character of the proposed development.

(c) Not during the life or lives of any issue now living or His Late Majesty King George the Fifth or within twenty-one years next after the death of the last survivor of such issue to sell or (except for the purposes aforesaid) to appropriate or to part with the possession of the land hereby conveyed or any part thereof without first offering it for sale to the Council and if during the period aforesaid the Purchaser or its sequels in title shall cease to use the said land or any part thereof for the purposes referred to in paragraph (a) hereof written notice of such successor shall forthwith be given to the Council and the said land or the part thereof in respect of which such user as aforesaid shall have ceased shall at the same time be offered for sale to the Council and if the Council in any of such events decide to purchase within three months of the date of the offer the purchase money for the whole of the land or for any part thereof shall be calculated upon the basis of terms to be approved by the District Valuer in accordance with the statutory basis of compensation applicable to a compulsory purchase transaction ruling at the time together with in either case an additional sum in respect of any buildings standing upon the land assessed on the same basis of valuation PROVIDED ALWAYS that such re-sale to the Council shall be subject to the prior approval of the Ministry of Education or the Ministry of Health as the case may be.

3. Covenants may be released or modified in a number of ways and the most used way is through the Lands Tribunal. In 1998 the Council sought specialist advice from Montagu Evans Chartered Surveyors on the removal of the restrictive covenant relating to the use of the land. A compensation payment would normally be payable to reflect the increase in the value of the land resulting from the development potential. The advice confirmed that if the Council refused to release the covenant, the matter would be referred to the Lands Tribunal who would be likely to agree to the release. The level of compensation would be restricted to the difference in the value of the land with and without the covenant when the transfer took place in 1952 accordingly it would be nominal.

4. To further enable Epping Forest College to redesign and rationalise its campus the College wishes to sell the Sports Hall shown by black verge on the attached plan. In order to achieve this the Council at its meeting of 28 September 2010 agreed to release the restrictive covenant mentioned at paragraph (a) and the right of pre-emption mentioned in paragraph (c) in the Third Schedule of the Conveyance.

5. Planning permission has been obtained by the College’s purchaser but is yet to be fully granted. The Council is landowner of the adjoining lands to which the benefit of the restrictive covenants is attached. Approval of the proposed scheme is being sought in accordance with restrictive covenant (b) of the Third Schedule of the Conveyance. It should be emphasised that is not a further request for covenant modification neither does it release any further value in the

site. The difference between the 1952 restricted land value and the then unrestricted value is de minimis

6. The College on its own behalf and that of its purchaser, Rubyrose seeks the Council's approval for the demolition of the Sports Hall and the construction in its place of a new 85 bed care home development with car parking and landscaped secure garden areas, as per Planning Decision ref. EPF/2439/10 and "considers that the approval should be given for the following reasons:

- (i) The proposed development has already received the approval of the Council as Planning authority and accords fully with all relevant development regulation;
- (ii) The proposed development does not harm or prejudice the interests and reputation of the Council.
- (iii) The proposed development does not interfere with or inhibit the Council's ability to discharge any of its statutory powers and/or duties; and
- (iv) The giving of approval would be consistent with the Council's exercise of well-being powers, to enter into or facilitate transactions which will bring significant benefit to the local population.

Resource Implications:

Finance

None. The covenants are of no value see paragraph 3.

Personnel

Valuation and Estate Management Service
Legal Services

Land

Council only interest in restrictive covenant (b) mentioned at point 2 (b) above is as landowner of the adjoining lands to which the benefit is attached.

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) can be released for undervalue provided that they are for social economic or environmental reasons.

Safer, Cleaner and Greener Implications:

The buildings are life expired and obsolete and may be replaced by new facilities meeting modern energy performance standards.

Consultation Undertaken:

None

Background Papers:

Cabinet – Minute 55 – 7 September 2009

Council – Minute 76 – 29 September 2009

Cabinet - Minute 51 - 13 September 2010

Council - Minute 73 – 28 September 2010

Planning Area South decision – Report item No 1 – application number EPF/2439/10 – 9 March 2011

Impact Assessments:

Risk Management

Loss of sports facilities for the college and wider community.

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.