

# Report to the Council

**Committee:** Cabinet

**Date:** 28 June 2011

**Portfolio Holder:** Councillor Gagan Mohindra (Finance and Economic Development)

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## 1. EPPING FOREST COLLEGE, LOUGHTON - APPROVAL TO DEVELOPMENT WORKS

### Recommending:

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

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### Background

1. The current Epping Forest College site was transferred in 1952 to Essex County Council by the then London County Council. The transfer was subject to covenants and a right of pre-emption which are now vested in the District Council (as successor to the London County Council in this case).
2. The covenants restrict the use of the land to use for the purposes of the Education Act 1944 and/or the National Health Services Act 1946 and require approval for the erection of any building.

### Previous Decisions

3. To enable Epping Forest College to re-design and rationalise its campus it wishes to sell the former Loughton Sports Hall site shown by black verge on the plan attached to this report.
4. In order to achieve this aim the Council at its meeting on 28 September 2010 agreed that the right of pre-emption in respect of that land should be released unconditional. The Council also agreed that the covenant which restricted the use of that land should be fully released in return for a side letter or words in a Deed of Release with respect to the College providing replacement sports facilities when their funding situation allowed.
5. The Deed of Release of covenants and the side letter have been agreed but have not yet been completed.

### Current Request

6. The College on its own behalf and that of its purchaser, Rubyrose is now seeking 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 in accordance with planning permission EPF/2439/10.

7. In support of its request the College has pointed out:
  - (a) the proposed development has already received the approval of the Council as Planning Authority and accords fully with all relevant development regulations;
  - (b) the proposed development does not harm or prejudice the interests and reputation of the Council;
  - (c) the proposed development does not interfere with or inhibit the Council's ability to discharge any of its statutory powers and/or duties; and
  - (d) 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.
8. The current request relates to the covenant which requires that buildings shall not be erected on the land except in accordance with layout and site plans first submitted to and approved by the Council.

### **Covenants**

9. Covenants may be released and modified in a number of ways and the most used ways through the Lands Tribunal. In 1998 the Council sought specialist advice from Montagu Evans, Chartered Surveyors on the removal of the restricted 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 which 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..

### **Reasons for Recommendation**

10. The Council's only interest in the outstanding covenant is as landowner of the adjoining lands to which the benefit is attached.
11. The former Sports Hall buildings are life expired and obsolete and will be replaced by new facilities meeting modern energy performance standards.
12. Accordingly we recommend as set out at the commencement of this report.