

Report to the Cabinet

Report reference: C/128/2005-06.

Date of meeting: 10 April 2006.



**Epping Forest
District Council**

Portfolio: Finance and Performance Management.

Subject: Release of Restrictive Covenant - Epping Forest College, Borders Lane, Loughton.

Officer contact for further information: Michael Shorten (01992 - 56 4124).

Democratic Services Officer: Gary Woodhall (01992 - 564470).

Recommendation:

That the Restrictive Covenant on land forming part of the Epping Forest College be released to enable the College to:

- (a) sell the site for residential development; and**
- (b) invest the capital receipt into the redevelopment of the College Campus.**

Report:

1. In 1998 the Council agreed to Epping Forest College's (EFC) request to release a restrictive covenant free of charge from surplus land within its ownership in Borders Lane, Loughton to facilitate residential development. A black border on the attached plan indicates the plot, comprising an area of about 7.9 acres/3.20 hectares.

The Restrictive Covenant:

2. The College Campus site was transferred in 1952 to Essex County Council (ECC) by the then London County Council (LCC) for development for educational purposes. The interest of the LCC in the land is now vested in Epping Forest District Council and that of ECC is vested in the Epping Forest Further Education Corporation. The land sold to ECC contained a covenant restricting the use of the land on the following basis:

"Not without the previous written 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 Service Act 1946".

3. The Council sought specialist advice from Montagu Evans, Chartered Surveyors, in 1998 on the removal of the restrictive covenant as a compensation payment would normally be payable to reflect the increase in the value of the land resulting from the new 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 the compensation would be based on the reduction of the purchase price when the transfer occurred in 1952. Therefore, any compensation would have been nominal. For the 7.9 acres/3.2 hectares being considered in 1998, compensation was likely to be in the region of £5,000 to £10,000 - 50% to 100% of the original sale price.

Development Proposals:

4. The College have now approached the Council with a request to extend the area for residential development to include additional land, as shown hatched on the plan and comprising of an area of about 2.4 acres/0.97 hectares. Planning consent has been granted for the proposed residential scheme but the above legal formalities are required to enable the development of the whole 10.3 acres/4.17 hectares. The planning consent includes a commitment to 30% affordable housing, bus shelter re-siting and cycle and pedestrian improvements.
5. The College have requested that the Council consider removing the covenant again for no financial consideration to assist with the sale of the development site.

Statement in Support of Recommended Action:

6. The proposed sale of the residential development site will raise valuable funds for the proposed redevelopment of the College Campus and highway improvement works.
7. The specialist advice confirms the view of the Head of Legal, Administration and Estates that on the evidence available, the Lands Tribunal is likely to agree to release this obsolete covenant with a nominal level of compensation payable to the District Council.

Options for Action:

8. To authorise the release of the educational covenant at nil consideration.
9. To seek payment for the release of the educational covenant although this could lead to the Council having to meet the costs of any unsuccessful defence action in the Lands Tribunal and delay the College's development plans.

Consultation Undertaken:

10. A planning application for residential development consent has been publicly advertised. Ongoing negotiations with the College's representatives Natrass Giles, Chartered Surveyors.

Resource Implications:

Budget Provision: Lands Tribunal compensation foregone for the release of the 1952 Restrictive Covenant, estimated to be between £1,500 and £3,000 based on 1998 legal and valuation advice.

Personnel: Valuation and Estate Management Service.

Land: Residential Development Land (2.4 acres/0.97 hectares), Epping Forest College, Borders Lane, Loughton.

Community Plan/BVPP Ref: Community Wellbeing.

Relevant Statutory Powers: Law Property Act 1925 - release of restrictive covenants and compensation.

Background Papers: Property File EV/1019 and Planning Application.

Environmental/Human Rights/Crime and Disorder Act Implications: None.

Key Decision Reference (if required): N/A.