

Report to the Cabinet

Report reference: C-043-2013/14
Date of meeting: 21 October 2013



Portfolio: Asset Management & Economic Development

Subject: Release of Covenant and Right of Pre-emption on land owned by Essex County Council – 94 & 94a Lawton Road, Loughton

Responsible Officer: Mark Scott (01992 564407)

Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

(1) To recommend to the Council the release of the restrictive covenants and right of pre-emption in Paragraphs (a), (b) and (c) of the Third Schedule of a Conveyance dated 6 Jan 1955 in respect of 94/94a Lawton Road, Loughton for the consideration of £ 127,500

Executive Summary:

94 & 94a Lawton Road is an Essex County Council owned Family Centre now surplus to requirements. ECC wish to sell the property for conversion into residential accommodation for the nearby E15 University of Essex Acting School. The land is subject to covenants restricting the use to education and health and requiring EFDC's consent to future development on the land. There is also a right of pre-emption (first refusal) in favour of EFDC in the event of the Purchaser wishing to sell the land in the future. Consent for the release of the covenants and right of pre-emption is requested for which ECC has agreed to pay £ 127,500.

Reasons for Proposed Decision:

To receive a valuable capital receipt.

Other Options for Action:

To not to agree to release the covenants and right of pre-emption. This would frustrate the provision of student accommodation for the E15 Acting School.

Report:

1. 94/94a Lawton Road was transferred by a Conveyance dated 6 January 1955 ('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. ECC 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 1955 accordingly it would be nominal.

4. Lambert Smith Hampton, Essex County Council's (ECC) agents, have applied for the above covenants and the right of pre-emption to be released in respect of 94/94a Lawton Road, formerly a Family Centre. It comprises 0.462 acres and is shown by black verge on the attached plan. Terms have been agreed for sale of the property to a third party to provide student accommodation for the nearby E15 University of Essex Acting School. Planning Application EPF/1728/13 for change of use from Class DI (Family Centre) to Sui Generis (Student Accommodation) has been applied for by the purchaser. Following the precedent some years ago when ECC sold a number of their surplus school sites for residential development it has been provisionally agreed that ECC will pay the Council a percentage of the gross sale proceeds for the release of the covenants and the right of pre-emption on the same basis. Accordingly a payment to the Council of £ 127,500 has been provisionally agreed.

5. The value of the covenants are limited (Para 3) but there is value in the Right of Pre-emption, which gives the Council a right of first refusal in the event of ECC wishing to sell the property. If not released it could restrict the viability of the purchaser's future development plans.

6. The Council is landowner of the adjoining lands to which the benefit of the restrictive covenants is attached.

7. In addition:

- (a) The proposed development does not harm or prejudice the interests and reputation of the Council.
- (b) The proposed development does not interfere with or inhibit the Council's ability to discharge any of its statutory powers and/or duties.
- (c) 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

£ 127,500 payment to the Council for the release of the restrictive covenants and right of pre-emption

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).

Safer, Cleaner and Greener Implications:

Surplus ECC buildings to be refurbished to modern standards meeting current energy performance standards.

Consultation Undertaken:

None.

Background Papers:

Planning Area South application number EPF/1728/13 (Due for determination 2 Oct)

Impact Assessments:

Risk Management

Failure to negotiate and secure the best value for the EFDC interest in this ECC owned property

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