

Report to the Cabinet

Report reference: C/059/2007-08.
Date of meeting: 8 October 2007.



Portfolio: Finance, Performance Management and Corporate Support Services.

Subject: Release of Restrictive Covenant - Loughton Hall, Epping Forest College, Loughton

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Recommendations/Decisions Required:

- (1) That the Cabinet notes the representations received from Epping Forest College concerning its application to the Council to release a restrictive covenant to enable a provisionally arranged sale of Loughton Hall for use as a residential care home to proceed;**
- (2) That the Cabinet recommends to the Council that it will not exercise its right of pre-emption to purchase Loughton Hall and/or the library site adjoining Epping Forest College; and**
- (3) The Cabinet approves the College's application and agrees that the restrictive covenant affecting Loughton Hall, within the grounds of Epping Forest College, be released and new covenants be imposed:**
 - (i) prohibiting the use of the Hall for any purpose other than residential care home; community, education or health purposes; and**
 - (ii) specifically prohibiting the use for any residential purpose other than as a residential care home.**

Report:

1. The Cabinet at its meetings on 11 June and 16 July 2007 received reports on Epping Forest College's request to release a restrictive covenant to enable a provisionally arranged sale of Loughton Hall for use as a residential care home to proceed.

2. Having received representations at the meeting on 16 July 2007 from David Butler, Principal of Epping Forest College and David Latham, the College's Campus Project Director, the Cabinet agreed:

“That the release of the Restrictive Covenant at Loughton Hall, Epping Forest College be deferred until a later meeting of the Cabinet pending the outcome of the marketing exercise.” (Minute 7 refers).

3. Since that meeting, the College and their Property Consultants Nattrass Giles have considered their position and have replied as follows:

“The College's view is that this is one of a number of appropriate uses to which the Hall could be put. There is considerable demand for good quality residential care in the area and, as you know, the service receives significant public funding support. The College will support all reasonable efforts to ensure that the Hall's architectural

and historic qualities are preserved or enhanced. The College is already obliged to ensure, as a condition of its current permissions to redevelop the Upper Site for housing and the Lower Site for new educational use, that certain works of essential repair and restoration to the Hall are agreed with the Conservation Officer and carried out to his satisfaction.

The College therefore concludes that officers' recommendations to Cabinet as to the release of restrictive covenants is entirely appropriate in the circumstances. However, the College understands that Cabinet have deferred the decision twice already, in the expectation of receiving a copy of written valuation advice on Loughton Hall which the College's Estate advisers Natrass Giles have prepared. Please note that the College does not intend to share this advice with Councillors or Cabinet, as this is private advice addressed to the College and, in the College's view, not relevant to the issue before Cabinet. Of much greater relevance is the fact that the College proposes to sell Loughton Hall to Mr Sohal for a price obtained at the end of an open tendering exercise, pursuant to public advertisement; which the College ran in accordance with all relevant statutory guidance requiring full market testing and fair and equal treatment of bidders. The College therefore urges that officers' recommendation of 11 June 2007 and written report of 16 July is accepted and implemented by Cabinet at its next meeting.

Please also note that in the past few days the College has received written requests from one unsuccessful bidder, Mr C Cooper, to alter its decision and conclude a disposal of Loughton Hall to him, for a price equal to Mr Sohal's bid. The College has pointed out to Mr Cooper that for the College to behave in this way would depart from rules of fair and equal treatment of tenderers and would be quite inappropriate."

4. Details of the College's campus development proposals together with the restrictive covenants, a right of pre-emption in favour of the Council and the proposed sale of Loughton Hall were contained in the reports to the Cabinet on 11 June and 16 July 2007. For ease of reference, the text is repeated below.

The Restrictive Covenants:

5. In 1998 the Council agreed to Epping Forest College's request to release a restrictive covenant free of charge from surplus land within its ownership in Borders Lane, Loughton. The land, totalling 7.9 acres/3.20 hectares, is shown outlined black and marked 'Residential Development Land' on the plan attached as Appendix 1. On 10 April 2006 the Cabinet further agreed to release the same covenant from an additional 2.4 hectares shown hatched black on the plan to facilitate residential development and investment of the capital receipt into the redevelopment of the College Campus.

6. The college site, including Loughton Hall, was transferred in 1952 to Essex County Council (ECC) by the then London County Council (LCC) subject to a restrictive covenant that the site be used only for educational purposes. The benefit of the LCC covenant is now vested in Epping Forest District Council (as successors to the LCC) and the ECC interests are vested in the Epping Forest Further Education Corporation. The remainder of the site was retained by Essex County Council for the library development.

7. More particularly, the covenants restrict use of the college site as follows:

"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 the any purpose other than for the purpose of the Education Act 1944 and/or the National Health Services Act 1946"

"Not to erect any buildings on that part of the campus save in accordance with layout and site plans first submitted to and approved by the Council". However, no approval is needed for the elevation of such buildings save that EFDC have the opportunity to examine the character of the proposed development."

8. The Council sought specialist advice from Montagu Evans, Chartered Surveyors, in 1998 on the removal of the restrictive covenant relating to the use of the land 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 original 7.9 acres/3.20 hectares in 1998 the compensation was considered to be in the region of £5,000 to £10,000 - 50% to 100% of the original sale price.

The Right of Pre-emption:

9. The title documents contain an arguable right of pre-emption such that on any disposal of any part of the College site it should first be offered for sale to EFDC at the current market value. The wording is poorly drafted and open to interpretation but as the proposed development requires the disposal of Loughton Hall and also the purchase of the library site (a new facility to be included in the new campus), the Council is required to waive its right to be offered the site for sale in the first instance.

10. Given that the Council has no current operational requirement for office type accommodation in the Loughton area, it is recommended that members agree to waive the right of pre-emption, but for these proposed transactions only.

Development Proposals:

11. The College have been granted planning consent to redevelop the College Campus. The proposal includes the disposal of the residential development land and hatched land shown on the plan. This sale, with additional borrowing by the College and gap funding from the Learning Skills Council will enable the development of the new college campus.

12. In addition, the Council's Planning Service has linked the college development with the refurbishment of Loughton Hall, which is a grade II listed building and in a dilapidated condition. Under the draft Section 106 Town and Country Planning Act 1990 Legal Agreement (S106 Agreement) obligations, the College will not be able to commence the new development until a schedule of works for the Hall is submitted for approval by the Council. Furthermore occupation of the new college facilities will not be possible until the works to the Hall have been carried out to the Council's satisfaction.

13. Whilst the work to satisfy the requirements of the S106 Agreement is expected to cost in the region of £600,000 the total refurbishment works to the Hall are estimated to cost in excess of £2 million, reflecting the specialist nature of the refurbishment and the considerable deterioration of the internal and external fabric of the building.

14. The College, wishing to limit their liability, arranged for Natrass Giles to offer the Hall on the open market for sale or to let. After a national marketing exercise, a few tenders were received from interested parties; all but two offered to purchase the Hall for a negative value. The bidder being considered is willing to sign a development agreement, which will not contractually complete until the works are finished and the Section 106 Agreement obligations are fulfilled.

15. The bidder wishes to use the Hall as a residential care home for the elderly and proposes to offer 30 bedrooms with ancillary office space. A Planning Application to change the use has been submitted and approved by the Area Plans Sub-Committee A, (reference EPF/2131/2006).

16. The College has requested that the Council consider amending the covenant to permit the proposed care home use for no consideration to assist in the sale of the Hall and

associated renovation subject to a restriction against use for residential dwellings.

17. Whilst the Council's Planning Service have approved the design and layout of the redevelopment of the campus site, and have indicated the works they require to the Hall, formal approval to the works is required from the Council as a party in the original agreement.

Statement in Support of Recommended Action:

18. The proposed sale of Loughton Hall will enable the redevelopment of the College to proceed and facilitate the refurbishment of the building. Whilst the College may receive some consideration from the sale, this will result in the gap funding from the Learning Skills Council being reduced by a corresponding amount.

19. Removal of the restrictive covenant relating to use of the Hall will enable the successful bidder to fully utilise the building as a means of recouping their considerable financial commitment on refurbishing a landmark listed building.

19. 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 Council.

20. The Council's approval to the redevelopment of the campus is required separately and in addition to the planning approval. This consent and the waiver of the Council's right to purchase both the Hall and the Library site are required to facilitate the full redevelopment proposed.

Other Options for Action:

21. To authorise the release of the educational covenant, give formal approval to the proposed redevelopment and waive the Council's right of pre-emption at nil consideration but subject to a condition that the property must not be used as residential dwellings.

22. To seek payment for the release of the education 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.

23. To take no further action at present on the College's request to release the restrictive covenants. In this circumstance, the College would be obliged to apply to the Lands Tribunal to release or modify the covenants to enable the proposed sale of Loughton Hall for residential care home purposes to proceed. As a consequence, the College's campus development plans may be delayed.

Consultations Undertaken:

24. A planning application for redevelopment of the College and for the associated residential development 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 covenants.

Personnel: Valuation and Estate Management Service.

Land: Loughton Hall, Epping Forest College, Borders Lane, Loughton.

Community Plan/BVPP reference: Community Wellbeing.

Relevant statutory powers: Law of Property Act 1925 – release of restrictive covenants and compensation.

Background papers: Property File EV/1019 and Planning Application EPF/2131/2006.

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

Key Decision reference (if required): Not a Key Decision.