

# MEDWAY COUNCIL

## CABINET

13 MARCH 2007

### DISPOSAL OF LAND AND VARIATION/RELEASE OF A RESTRICTIVE COVENANT

Portfolio Holder: Councillor Alan Jarrett, Finance

Report from: Mick Hayward, Chief Finance Officer

Author: Nick Anthony, Head of Property

#### 1. Summary

- 1.1 This report requests that Cabinet declares a house and some land surplus and delegates authority to the Chief Finance Officer to vary/release a restrictive covenant.

#### 2. Decision Issues

- 2.1 As the value of the house and land is likely to be over £100,000, but below £1,000,000, this is a matter that can be decided upon by Cabinet.
- 2.2 The value of the consideration for the variation/release of the covenant is likely to be over £20,000 but below £1,000,000. Also Policy and Resources Committee at its meeting on the 17 September 2001, supported the enforcement of the covenant on the site, this is therefore a matter that will have to be decided upon by Cabinet.

#### 3. Background

- 3.1 The council owns in excess of 1,000 property assets and, next to staff, property is the council's largest single cost. Effective management is therefore essential if the council is to fulfil its core objectives and provide good quality, value for money services. On 4 April 2006, Cabinet approved the Corporate Property Strategy, which provides corporate guidance to assist in the effective management of the council's property assets over the next five years and beyond.
- 3.2 To ensure that the council's property assets contribute to the Community Plan objectives, and to help to develop Medway as a city of learning, culture, tourism and enterprise, all properties are considered in the context of rationalisation. This report presents details of a house and some land, which are considered to be surplus to requirements.

3.3 The report also sets out details of a restrictive covenant that can be varied/released.

#### **4. 39 Northbourne Road and land to the rear of Northbourne Road Gillingham**

4.1 The house was an operational property but is now vacant, until recently it was used by community services. The 3 bedroom semi-detached house is shown edged black on the attached plan.

4.2 It is also proposed that the redundant land at the rear of the house, which is hatched black on the plan, is declared surplus, so that it can be sold at the same time as the house.

#### **5. Former garage site at Laburnham Road Strood.**

5.1 The garage site edged black on the attached plan was one of 15 sites of lock up garages sold by the former Rochester City Council at auction in 1988. The 24 garages were demolished prior to 2001 and the site fenced. The site has not been used for parking for a number of years.

5.2 The transfer to the purchaser of the Laburnham Road sites contained a covenant "not without the written consent of the council in its capacity as vendor to use the land or any part thereof otherwise than for the purposes of parking or garaging cars". The covenant would have been applied to benefit land retained by the council and in this particular site, the houses in Laburnum Road adjoining the garage site that were then owned by the council

5.3 There is no record to indicate why Members at that time wished to apply such a covenant and in particular whether it was to protect future development gain to the council or to safeguard the parking for residents.

5.4 The retained land held by the council was transferred to Medway Housing Society (MHS) on 27 July 1990 with the housing stock transfer. The benefit of the covenant also transferred to MHS.

5.5 The transfer to MHS provided that MHS should not release the covenant.

5.6 The owner / developer of the Laburnum Road site approached MHS to release the covenant in 2001. MHS had no objection to its release.

5.7 A planning application by the owners for permission to develop the site for 2 detached 3 bed houses and a pair of 3 bed semi-detached houses was refused on 13 June 2001, overriding an officer recommendation for approval.

5.8 Members of the Policy and Resources Committee at its meeting on the 17 September 2001 considered an exempt report on a Member Item as follows: "Medway Council will do all in its powers to enforce the restrictive covenant on the garages site at the end of Laburnum Road, Strood at the back of

Poplar Close to hinder the building of houses on the site. This is to be done in the spirit of the original covenant placed in the selling of the plot”.

- 5.9 Members agreed, “that the council supports the enforcement of the existing covenant on the garage area of Laburnum Road marked in black on the plan attached to the report, to the benefit of local inhabitants of Laburnum Road”. (Minute 3691 17 September 2001 refers).
- 5.10 Developer interest has recently been expressed again in this site for residential redevelopment. A decision is sought as to whether the Policy and Resources Committee decision is still the position of the council in respect of this site or whether if planning consent were forthcoming, joint negotiations by MHS and the council may be opened with the owner / developer to negotiate a release of the covenant. The council and MHS have agreed that where voluntary negotiations result in a release of a garage covenant, the consideration is split 75% to the council and 25% to MHS, with both party’s costs being met by the applicant.
- 5.11 MHS has confirmed that it still has no objection to the release of the covenant.

## **6. Options**

- 6.1 The land and house can; either be retained as is, used for another council use, or sold. If the land and house are retained, there will be ongoing management and maintenance costs. If they are sold, management costs would be eliminated and a capital receipt (at full market value) will be obtained, which the council can use towards funding service priorities.
- 6.2 The council may agree to release the covenant subject to satisfactory terms and a consideration being negotiated.

## **7. Consultation**

- 7.1 Consultation has taken place with other service directorates and no objections to this disposal or variation/release of covenant have been received. Consultation has also been carried out with the Development Control Manager, who has reviewed his report and recommendation on the original planning application for the covenant site and is of the opinion that if the same application were submitted now, his recommendation would be to approve it.

## **8. Financial and legal implications**

- 8.1 Any existing revenue costs will be eliminated by disposal of the house and land and a capital receipt generated.
- 8.2 A disposal of 39 Northbourne Road and the land to the rear of Northbourne Road would be made pursuant to s123 of the Local Government Act 1972, under this section, the Council is under a duty to obtain best consideration, unless consent is obtained from the Secretary of State or a general consent

is available under Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003.

- 8.3 The legal and financial implications in respect of the covenant are contained in the exempt appendix.

## **9. Recommendations**

- 9.1 That 39 Northbourne Road and the land to the rear of Northbourne Road, shown respectively edged black and hatched black on the plan, are declared surplus and the Chief Finance Officer be given delegated authority to agree the terms of such disposal at best consideration.
- 9.2 That the Chief Finance Officer is given delegated authority to vary/release the covenant on the former garage site at Laburnham Road Strood as shown edged black on the attached plan, on the best terms reasonably obtainable.

## **10. Suggested reasons for decisions**

- 10.1 The disposal of this house/land will contribute towards the council's capital receipt target of £4m per annum and reduce revenue costs.
- 10.2 The variation/release of covenant will contribute towards the council's capital receipt target.

### **Lead officer contact:**

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### **Background Papers:**

Corporate Property Strategy, approved by Cabinet on 4 April 2006.  
Minute 3691 Policy and Resources Committee 17 September 2001.