

## **CABINET**

**5 FEBRUARY 2019**

### **LAND BETWEEN 5 AND 11 TENNYSON AVENUE, CLIFFE WOODS, ROCHESTER, ME3 8JF**

Portfolio Holder: Councillor Adrian Gulvin, Resources  
Report from: Perry Holmes, Chief Legal Officer  
Author: Des Andrews, Senior Valuation Surveyor

#### **Summary**

This report advises Cabinet of the proposed residential development of the above land and seeks delegated authority for officers to:

- Release or vary the restrictive covenant, on part of the subject land to permit residential development.

#### **1. Budget and Policy Framework**

1.1 As the consideration payable to the Council for the release or variation of the restrictive covenant is likely to exceed £20,000, this is a matter for Cabinet.

#### **2. Background**

2.1 The land edged black and hatched black on the attached plan (Appendix 1) was transferred by the City Council of Rochester upon Medway in July 1982 to the Trustees of Cliffe Woods Community Association (Village Hall).

2.2 The transfer restricted the use of the subject land: “for the purpose of car parking for and access to the village hall and for no other purpose whatsoever.....”

2.3 The current owners, the Trustees of Cliffe Woods Community Association (Village hall) are a registered charity and have obtained outline planning consent for the erection of a pair of semi - detached houses on part of the subject land (hatched black on attached plan – Appendix 1) and have marketed this site. They have provisionally agreed with a potential purchaser to dispose of the hatched black area whilst retaining access and parking for the village hall. The proceeds from the disposal will be used to refurbish the village hall.

2.4 Before the development can take place, the restrictive covenant as set out in paragraph 2.2 above will need to be released or varied.

### **3. Options**

3.1 Cabinet can decide to either:

3.1.1 Grant delegated authority to allow officers to vary or release the restrictive covenant to allow the development of the hatched black land

Or

3.1.2 Refuse to delegate this authority, which would mean that the proposed disposal and development will not be implemented.

3.2 The recommended option is 3.1.1.

### **4. Advice and analysis**

4.1 If adopted, the proposal set out within this report will hopefully facilitate the provision of additional residential units in the locality. In addition to this, the Council should be able to realise a significant receipt from the removal or variation of the restrictive covenant.

### **5. Risk management**

5.1 If the Council refuses to vary or release the restrictive covenant this will not allow the development of the land and the Council will not be able to realise a significant receipt.

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>
The subject land is not developed.	Planning consent has already been granted for the development of the land but due to the restrictive covenant, the site cannot be developed.	Grant delegated authority to allow the covenant to be released or varied.

### **6. Consultation**

6.1 The Council's Planning department has been consulted on the proposed development of the subject land affected by the restrictive covenant with outline planning consent being granted 10 May 2018 (MC/17/4068).

### **7. Financial and legal implications**

7.1 The Council is under a duty to obtain the best consideration reasonably obtainable when it disposes of interests in property, unless consent is obtained from the Secretary of State or one of the general consents applies.

## **8. Recommendation**

- 8.1 Cabinet is asked to agree to delegate authority to the Chief Legal Officer, in consultation with the Portfolio Holder for Resources, to vary or release the restrictive covenant on part of the subject land hatched black on the plan set out in Appendix 1 to the report, on the best terms reasonably obtainable.

## **9. Suggested reasons for decision**

- 9.1 The Council will receive a significant receipt and release or variation of the covenant will permit the development of 2 residential units in a rural location making use of redundant land.

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### **Appendices**

Appendix 1 – site plan

### **Background papers**

None