

Agenda Item No:

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Report of: Head of Land and Property
Report to: Director of City Development
Date: 10 March 2015
Subject: Land adjoining St Hilda's Church, Knowsthorpe Crescent, Cross Green, Leeds 9

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	Burmantofts & Richmond Hill	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:	10.4(3)	
Appendix number:	1	

Summary of main issues

1. The subject site is an area of land sold by the Council in 1935 to St Hilda's Church, subject to a restrictive covenant limiting its use for purposes in connection with the church.
2. The Director of City Development previously gave approval in 2009 to vary the covenant for a less than best consideration, in order to facilitate the potential sale of the land to a residential developer, who in return was to construct a community facility for the Church. The developer never acquired the land and the covenant remains.
3. The Church is now seeking a variation of the covenant to facilitate the sale of the land to St George's Crypt for the erection of 20-25 one person managed units.

Recommendations

4. It is recommended that approval be given to the variation of a restrictive covenant on land owned by St Hilda's Church, in order to facilitate the sale of the land to St George's Crypt for the erection of 20-25 one person managed units, in accordance with the terms outlined in the confidential appendix of this report.

1 Purpose of this report

- 1.1 The purpose of this report is to seek approval to the variation of a restrictive covenant on land owned by St Hilda's Church, in order to facilitate the sale of the land to St George's Crypt for the erection of 20-25 one person managed units, in accordance with the terms outlined in the confidential appendix of this report.

2 Background information

- 2.1 The subject site, shown on the attached plan, is an area of undeveloped grassland measuring approximately 0.27 acres that was sold by Leeds City Council to the Parochial Church Council of the Parish of Saint Hilda and the Ripon Diocesan Board of Finance on 2 December 1935. A restrictive covenant was inserted in the conveyance, which states that the land '*shall be used only for purposes in connection with the Vicarage, Church and School adjoining the said property or as garden ground upon which a greenhouse may be erected...and for no other purpose whatsoever and no building or erection whatsoever shall be erected or built thereon without the previous consent in writing of the Corporation*'.
- 2.2 The Church previously approached the Council in March 2008 seeking a release of the covenant in respect of the subject site. The Church had provisionally agreed to dispose of the land to a private developer who had wished to erect a residential development on the site. Under the terms of the provisional agreement, it was understood no money would exchange hands between the Church and developer, who in return for acquiring the site would construct a new community hall extension to the Church building at an estimated cost of £250,000 and pay all the Church's associated costs. Full planning permission from the church authorities for the community hall extension was understood to have been granted in December 2007.
- 2.3 Planning permission for a residential development comprising 57 flats was granted in September 2004 on the adjoining brownfield site (marked B on the attached plan), which is owned by a third party developer. A subsequent planning application for 128 flats was submitted by the developer, which initially incorporated the subject site on which it was proposed to erect a four storey block of 29 flats. However, this was later removed from their proposal, as a case for developing the greenfield site for residential use was not substantiated in planning terms.
- 2.4 In March 2008, terms for the release of the restrictive covenant were offered on a market value basis based on a hypothetical 15 one bed flat scheme. Ward Members subsequently requested that the covenant be released for nil consideration in a less than best transaction in view of the apparent community benefit that a new community hall would bring to the church and local area. A revaluation was undertaken in January 2009 which produced a negative land value based on the same scheme. Despite this the developer was still keen to pursue the site to find a viable scheme. Consequently, a report was taken to the Council's Asset Management Board (AMB), which on 6 February 2009 gave its support to a variation of the restrictive covenant at less than best consideration.
- 2.5 Despite AMB's support, the developer insisted on a formal Council decision being taken to release/vary the covenant for a less than best consideration. Without a firm development proposal, in June 2009 a further revaluation was undertaken on the basis of a higher density development (35 flats), which would allow the developer greater scope for development in order to achieve a financially viable scheme. Details of this valuation are given in the confidential appendix.

- 2.6 The Director of City Development subsequently gave approval on 24 July 2009 to vary the covenant at less than best consideration in order to facilitate the construction of a community facility on the Church site.
- 2.7 Whilst approval was given to vary the covenant, the developer was never able to achieve a viable scheme on the site and withdrew its interest. The covenant therefore remains. Outline planning permission for 86 flats on the developer's land was granted on 15 August 2012, which did not include the Church's land.

3 Main issues

- 3.1 The Church has recently approached the Council to seek a release or variation of the covenant in order to permit the erection by St George's Crypt of 20-25 one person managed units for single people in an advanced stage of rehabilitation into society.
- 3.2 It is proposed to vary the restrictive covenant to permit the development of 20-25 one person managed units for charitable purposes, in accordance with the terms outlined in the confidential appendix of this report.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Ward Members have been fully briefed by the Church and St George's Crypt and are understood to be supportive of the proposal to vary the covenant in order to facilitate the development by St George's Crypt. Further to previous discussions, Ward Members were provided with an update on 30 May 2014 to advise that a report was to be taken forward by the Council to seek approval to this matter. No response was requested, since they had been fully involved with discussions so far. Councillor Maureen Ingham did, however, email on the same day to confirm that she had previously been consulted and confirmed her full support to the proposal.
- 4.1.2 The Council's Executive Member for the Economy and Transport, Councillor Richard Lewis, has been briefed and is supportive of the proposal.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no equality diversity cohesion or integration issues arising from this proposal.

4.3 Council Policies and City Priorities

- 4.3.1 The proposal will support the Council objective of ensuring high quality public services by helping to tackle poverty and improve public health through the St George's Crypt development. In addition, the proposal will support the delivery of the Better Lives Programme through housing, care and support because of the associated benefits brought by the St George's Crypt flats.

4.4 Resources and Value for Money

- 4.4.1 Any financial receipt or payment of fees from the variation of the restrictive covenant will support the Council's revenue budgets.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Under Part 3 Section 3E Paragraph 2(a) of the Council's Constitution (Officer Delegation Scheme (Executive Functions)) the Director of City Development has authority to discharge any function of Executive Board in relation to the management of land (including valuation, acquisition, appropriation, disposal and any other dealings with land or any interest in land) and Asset Management.
- 4.5.2 The proposal constitutes a significant operational decision decision and is therefore not subject to call in.
- 4.5.3 The proposal is a release of a restrictive covenant and is therefore not bound by the best consideration provisions under Section 123 of the Local Government Act 1972 (or under the Housing Act 1985).
- 4.5.4 The information contained in the Appendix attached to this report relates to the financial or business affairs of a particular person, and of the Council. This information is not publicly available from the statutory registers of information kept in respect of certain companies and charities. It is considered that since this information was obtained through one to one negotiations for the negotiation of a release of a restrictive covenant then it is not in the public interest to disclose this information at this point in time as this could undermine this method of negotiation and affect the integrity of releasing restrictive covenants by this process. Also it is considered that the release of such information would or would be likely to prejudice the Council's commercial interests in relation to other similar transactions in that prospective parties involved in other similar transactions could use this information to influence the level of consideration which may prove acceptable to the Council. It is considered that whilst there may be a public interest in disclosure, much of this information will be publicly available from the Land Registry following completion of this transaction and consequently the public interest in maintaining the exemption outweighs the public interest in disclosing this information at this point in time. It is therefore considered that this element of the report should be treated as exempt under Rule 10.4.3 of the Access to Information Procedure Rules.

4.6 Risk Management

- 4.6.1 The risks associated with the proposal to vary the restrictive covenant at less than best consideration are outlined in the confidential appendix attached to this report.

5 Conclusions

- 5.1 The report seeks approval to the Council varying a restrictive covenant on land owned by St Hilda's Church, in order to facilitate the sale of the land to St George's Crypt for the erection of 20-25 one person managed units, in accordance with the terms outlined in the confidential appendix of this report.

6 Recommendations

- 6.1 It is recommended that approval be given to the variation of a restrictive covenant on land owned by St Hilda's Church, in order to facilitate the sale of the land to St George's Crypt for the erection of 20-25 one person managed units, in accordance with the terms outlined in the confidential appendix of this report.

7 Background documents¹

7.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.