

Notice of public Decision Session - Leader (incorporating Finance and Performance)

To: Councillor Steward

Date: Monday, 14 March 2016

Time: 5.30 pm

Venue: The Auden Room - Ground Floor, West Offices (G047)

AGENDA

Notice to Members – Calling In

Members are reminded that, should they wish to call in any item* on this agenda, notice must be given to Democracy Support Group by 4.00pm on **Wednesday 16 March 2016**.

*With the exception of matters that have been the subject of a previous call in, require Full Council approval or are urgent which are not subject to the call-in provisions. Any called in items will be considered by the Corporate and Scrutiny Management Committee.

Written representations in respect of items on this agenda should be submitted to Democratic Services by **5.00pm on Thursday 10 March 2016**.

1. Declarations of Interest

At this point in the meeting, the Executive Member is asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which he might have in respect of business on this agenda.

2. **Minutes** (Pages 1 - 4)
To approve and sign the minutes of the Decision Session held on 22 February 2016.

3. **Public Participation**
At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Leader's remit can do so. The deadline for registering is **5:00 pm on Friday 11 March 2016**.

Filming, Recording or Webcasting Meetings

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The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at https://www.york.gov.uk/downloads/file/6453/protocol_for_webcasting_filming_and_recording_council_meetingspdf

4. **Application for Community Right to Bid (Pages 5 - 20) under the Localism Act 2011 - The Derwent Arms Public House, Osbaldwick**
This report presents an application by Osbaldwick Parish Council to list the Derwent Arms Public House, Osbaldwick as an Asset of Community Value.
5. **Endeavour House, George Cayley Drive and ADVA Building, Kettlestring Lane - Applications to remove restrictive covenants** (Pages 21 - 32)
This report sets out details of two applications to lift restrictive covenants of office sites on Clifton Moor for low-cost residential development.

6. Urgent Business - City of York Trading Company

This report is submitted in response to the Public Interest Report issued by the council's external auditor on 26 February 2016. The Executive Leader is asked to give consideration to retrospectively authorising the payments that were made to two directors of CYC Trading Company who were additionally employed by City of York Council [*report to follow*].

This item has been included on the agenda as an urgent item as there is an expectation from the auditors that the matters within a Public Interest Report are dealt with within 30 days of issue of the report.

Democracy Officer:

Name: Jayne Carr

Contact Details:

Telephone – (01904) 552030

Email – jayne.carr@york.gov.uk

For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

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City of York Council

Committee Minutes

Meeting	Decision Session - Leader (incorporating Finance and Performance)
Date	22 February 2016
Present	Councillor Steward

16. Declarations of Interest

The Executive Leader was asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests that he may have in the business on the agenda. None were declared.

17. Minutes

Resolved: That the minutes of the Decision Session held on 20 October 2015 be approved and signed as a correct record.

Matter Arising

The Executive Member stated that, due to an administrative error, the Derwent Arms Public House had not yet been listed as an Asset of Community Value (minute 13 refers). This was a regrettable situation and the issue was due to be given further consideration at a forthcoming decision session.

18. Public Participation

It was reported that there had been one registration to speak at the meeting under the Council's Public Participation Scheme.

Matthew Bloch, representative of the Friends of the Bay Horse group, spoke in support of the application for the Bay Horse to be designated as an Asset of Community Value. He stated that he believed that the pub would be profitable as a standalone asset and that it was the cost of the lease that had been the

issue. If the Bay Horse were to be listed as an Asset of Community Value there would be a good chance of raising the required funding. It was Murton's only public house and was therefore unique.

19. Application for Community Right to Bid under the Localism Act 2011 - The Bay Horse, Murton

The Executive Leader considered a report that presented an application from The Friends of the Bay Horse, to list the Bay Horse, Murton Way, Murton as an Asset of Community Value (ACV).

Referring to Annex 2 of the report, the Executive Member stated that he had contacted the Asset Director at Enterprise Inns plc to clarify some of the points that had been raised in the letter.

The Executive Member stated that he understood that the Bay Horse was currently on the market and sought clarification from the representative of the Friends of the Bay Horse as to the measures they were taking to raise the necessary funding. The representative stated that a fundraising campaign was planned, some pledges of funding had already been received and the possibility of obtaining a mortgage had not been ruled out.

The Executive Member stated that he believed that the criteria to list the Bay Horse Public House as an Asset of Community Value had been met, as it was clearly adding value to the community and was the only public house in the village. Whilst he was keen to protect public houses for the benefit of the community wherever possible, he was also mindful of the need to ensure that the listing of such assets was not seen as a way of making it difficult for the companies who owned them. He was therefore pleased to note the efforts that were being made by the community to raise the necessary funding and hoped that the designation of the Bay Horse as an Asset of Community Value would assist them in this process.

The representative of the Friends of the Bay Horse stated that, if it became evident that it would not be possible to raise the necessary funding, the Group would make this clear in order not to prevent a sale being made to another party.

Resolved: That the application to list The Bay Horse Public House as an Asset of Community Value be approved.

- Reasons: (i) The criteria had been met for the reasons set out in the report.
- (ii) To ensure the Council meets its legislative requirements of the Localism Act 2011 and promotes community access to community facilities.

Action Required

1. Make necessary arrangements to progress the listing as an ACV TB

Councillor Steward- Executive Leader

[The meeting started at 4.45 pm and finished at 5.00 pm].

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14th March 2016

Decision Session – Executive Leader (incorporating Finance and Performance)

Report of the Assistant Director of Finance, Asset Management and Procurement

Applications for Community Right to Bid under the Localism Act 2011 – The Derwent Public House, Osbaldwick

Summary

1. This report presents an application by Osbaldwick Parish Council to list The Derwent Arms Public House, 39 Osbaldwick Village, Osbaldwick, York, YO10 3NP as an Asset of Community Value (ACV), for consideration by the Council.

Background

2. On 6th March 2014 Cabinet Member approved the proposals for the implementation of a process for the Community Right to Bid legislation to ensure the Council has a process in place for dealing with any applications and the establishment and maintenance of a list of Assets of Community Value.
3. The purpose behind these provisions is to ensure that property (land and building) assets which are currently used to the benefit of the local communities are not disposed of without the local community being given a fair opportunity to bid for these assets when they are put on the open market. This right is not simply to accommodate 'public assets' but also private assets, the test is whether such assets are viewed as 'assets of community value'. These assets therefore could be currently owned by the public, private or voluntary sector.
4. The definition of 'community value' is set out in the regulations and can be summarised as
 - The actual current use of the building/land furthers social well being or the social interests of the local community

- Realistically this use can continue for the next 5 years
 - There was a time in the recent past where actual use furthered these aims.
5. There is no exhaustive list of what is considered to be an asset of community value but cultural, recreational and sporting interests are included. Excluded specifically are residential type properties (such as hotels, housing in multiple occupation and residential caravan sites) and operational land of statutory undertakers.

The process

6. The regulations set out how potential assets can be listed which in brief is as follows:
- **Nomination** – this can be by a voluntary or community body with a local connection. Includes parish councils, neighbourhood forums, charities, community interest groups but excludes public or local authorities (except parish councils).
 - **Consideration** – the local authority have 8 weeks to make the decision which is decided by an ‘appropriate group’. The process adopted for CYC is an initial consideration by the Capital and Asset Board (CAB) which has cross-Council representation at a senior level (the Board is chaired by the Director of Customer and Business Support Services). A report is then written to the Executive Leader (incorporating Finance and Performance) who will then formally take the decision. If the nomination is successful the asset details are entered onto the ‘Community Value list’ – see below – and also the local land charges register. If unsuccessful then the details are entered onto an ‘unsuccessful nominations’ list for a period of 5 years to prevent repeat nominations. The owner can request a review of the decision which must be completed within 8 weeks and the owner can further appeal within 28 days of the review outcome to a Tribunal.
 - **The ‘Assets of Community Value’ List** – this needs to be published and reviewed regularly and must be accessible in electronic and paper format.
 - **Disposal of assets on the list** – if a building or piece of land which is on the list is going to be sold with vacant possession then the owner of the asset needs to give notice to the local authority. There is then a 6 week moratorium period for any community group to express interest in writing and if they do then a 6 month period for that group to prepare

its bid. After that period the owner can market the property and any bid from the community group will be considered with bids from other interested parties. There is no guarantee that the offer from the community group will be successful as the owner of the asset will dispose of the property in accordance with its own criteria for disposal. There are a number of exceptions contained within the legislation that mean that this moratorium period does not apply and the owner does not need to give notice of its intention to sell. This includes when there is a legally enforceable requirement, which pre-dates the listing, to sell to a specific party.

- **Compensation** – the presence of the land or building asset on the community value list may result in additional expenditure or a loss to the owner and therefore the owner can apply for compensation from the local authority. The figure is limited to costs or losses incurred only whilst the asset is on the list and could include such items as legal expenses for appeals, costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value). This compensation is determined by the local authority (the adopted policy states that this is carried out by the Capital Asset Board) and the owner can have the compensation reviewed within 8 weeks and appeal to a Tribunal if still not satisfied. It should be noted that compensation can only be claimed by private owners (no compensation for public authorities) and the government has not provided any funding for this compensation (or for any costs associated with any of these provisions). However this should not be a factor in determining any application for listing of a pub as an Asset of Community Value.

7. For nominated property to be included on the Council's ACV register the Council must consider that the property falls within the statutory definition of 'land of community value' which is that either:
 - (i) A current principal use of the property furthers the social well-being or social interests of the local community and there is a realistic prospect of such use continuing

OR

 - (ii) A principal use of the property in the recent past has furthered the social well-being or social interests of the local community and there is a realistic prospect of such use commencing again within the next 5 years

If the nominated property falls within either (i) or (ii) and the nominators are a group entitled to submit the nomination then the local authority must list the asset as an ACV.

8. It should also be noted that changes to the General Permitted Development Order have been made with effect from the 6th April 2015, which means that where a pub is listed as an asset of community value a planning application is required for a change of use or demolition of the pub building. However this should not be a factor in determining any application for listing of a pub as an Asset of Community Value

The Derwent Arms Public House, 39 Osbaldwick Village, Osbaldwick, York.

9. The freehold of The Derwent Arms is owned by Punch Partnerships (PTL) Ltd. The nomination is being made by Osbaldwick Parish Council. The application has been checked by legal services and has been confirmed as valid. In accordance with the regulations, the freehold owner, and the tenant occupier of the property have been informed in writing, that the application has been made. They have been invited to make representations regarding the nomination. None have so far been received.
10. The Parish Council have nominated the Derwent Arms on the basis that the public house and attached field are an integral and important part of Osbaldwick Conservation Area, as recognised in 2004. It is a meeting point for community groups and sports teams, and offers a wealth of activities for a wide range of age groups. The Parish Council considers that the The Derwent Arms boosts the social wellbeing of the community, and as such, is valued as an asset to this particular area of the city.
11. The field was used in the distant past for cricket and football as well as allotment plots. The field hosts the Village Gala once a year and has hosted an annual bonfire on 5th November organised by the pub, although there hasn't been one for the last two years. The Caravan Club use the field four times a year for related events.
12. There is significant precedent set elsewhere in the country from other authorities who have accepted pubs onto the list even where they are currently run as commercial businesses.

13. If the decision is taken to include this application on the list of assets of community value, the owner has the right to request the Council to review its decision. The deadline is eight weeks from the date written notice of listing was given, or a longer period allowed by the authority in writing. The property will remain listed while the review is carried out.

Implications.

14. **Financial** – Compensation may be payable by the Council to the owner of any property which is listed. The figure is limited to costs or losses incurred only whilst the asset is on the list and could include such items as legal expenses for appeals, costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value).

Human Resources (HR) – none

Equalities, Crime and Disorder and IT - none

Legal – Organisations falling within any of the following categories are eligible to submit an ACV nomination relating to property within their local area:

- (i) a parish council
- (ii) a charity, non-profit making company or community interest company with a local connection to the nominated property
- (iii) an unincorporated association which has at least 21 members registered to vote in the local area

The organisations who have submitted the nominations covered by this report fall within the above criteria and are therefore entitled to submit their ACV nominations.

Paragraph 7 of the report contains the statutory definition of 'land of community value'. If the listing authority considers that a nominated property falls within that definition then it must include the property on its ACV register.

Property – All property issues included in the report

Other – none

Risk Management

15. There are no significant risks to this application.

Recommendations

16. The Executive Member is asked to.

Agree to the application to list the Derwent Arms Public House as an Asset of Community Value (ACV) as the criteria have been met for the reasons set out above.

Reason: To ensure the Council meets its legislative requirements of the Localism Act 2011 and promotes community access to community facilities.

Contact Details

Author:

Tim Bradley
Asset Manager
Asset and Property Management
Tel No.553355

Chief Officer Responsible for the report:

Tracey Carter
Title - AD Finance Property
Procurement

Report
Approved



Date 3 March 2016

Specialist Implications Officer(s)

Implication Legal
Name Andy Docherty
AD Governance and ICT
Tel No. 551004

All

Wards Affected: Osbaldwick

For further information please contact the author of the report

Annexes

Annex 1 – The Derwent Arms Public House – Application to add to the List of community assets

Annex 2 – Current list of assets of community value



ASSETS OF COMMUNITY VALUE NOMINATION FORM

If you need assistance completing this form, then please refer to the guidance document which can be downloaded from the website www.york.gov.uk/assetsofcommunityvalue or alternatively call 01904 553360.

Section 1

About the property to be nominated

Name of Property:	DERWENT ARMS
Address of Property:	39 OSBALDWIN VILLAGE, OSBALDWIN, YORK
Postcode:	YO10 3NP

Property Owner's Name:	PUNCH PARTNERSHIPS (PTL) LTD
Address:	JUBILEE HOUSE, SECOND AVENUE, BURTON-UPON-TRENT, STAFFORDSHIRE
Postcode:	DE11 2WF
Telephone Number:	01283 501600
Current Occupier's Name:	MR. T. D KING & MRS. S. KING

Section 2

About your community organisation

Name of Organisation:	OSBALDWIN PARISH COUNCIL
Title:	MRS
First Name:	LOUISE
Surname:	PINK
Position in Organisation:	CLERK
Email Address:	osobaldwinparishcouncil@yahoo.co.uk
Address:	1 SIROCCO COURT, FOSBAY, YORK
Postcode:	YO31 8FE
Telephone Number:	01904 674552

Organisation type:

Click in field for options

Organisation size

How many members do you have?

Section 3**Supporting information for nomination**

Any information entered in this section only may be copied and passed onto the owner of the property you are nominating. Definition of an asset of community value can be found in the guidance document.

Why do you feel the property is an asset of community value? Please give as much information as possible.

PLEASE SEE SEPARATE SHEET

Section 4**Boundary of Property**

What do you consider to be the boundary of the property? Please give as much detail/be as descriptive as possible. Please include a plan.

PLEASE SEE ATTACHED MAP

Section 5**Attachment checklist**

- Copy of group constitution (if you are a constituted group)
- Name and home address of 21 members registered to vote in nomination area (if group is not constituted)
- Site boundary plan (if possible)

Section 6**Declaration**

I can confirm that to the best of my knowledge the information contained in this nomination form is complete and accurate.

Signed:



Dated:

01.02.16

Please e-mail your completed form to property.services@york.gov.uk or post to:

Asset and Property Management
 City of York Council
 West Offices
 Station Rise
 York
 YO1 6GA

Osbaldwick Parish Council Members

Mr Mark Warters – **Chairman**

Mr Roger Bedford - **Vice Chairman**

Mrs Jan Starzynski

Mr Kevin Lamb

Mr Laurence Pye

Mrs Audrey Pye

Mr Robert Peel

Mrs Denise Peel

Mrs Suzanne Cambridge

Mrs Lynne Bennett

Mrs Helen Ripley

Mr Frank Wilson

Mr Terry Johnson

Mrs Janet Johnson

Mr Wally Beavers

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Section 3

The Derwent Arms and adjoining land is an integral and important part of Osbaldwick Conservation Area as recognised in 2004.

The public house itself acts as a focal point and is used for a number of community events such as sporting activities including darts and dominoes competitions, music events every Saturday evening, golfing societies, the Caravan Club rent out the pub once a year to hold a 'Burns Night', Claire Voyant evenings and various Charity Events. A raffle and evening of entertainment was recently held on the 11th October 2015 on behalf of York Against Cancer and raised a total of £750.00. It can also be hired for parties and local funerals. Aswell as local residents the public house also draws people in from the wider community, regularly attracting residents from the Hull Road and Link Road areas.

Aside from the value of the public house as a community hub and focal point of the village the pub field has a long history of community use and value.

Uses in the distant past were as a village cricket field and into the 1980's a successful pub football team were based there. In addition, the pub field had allotment plots which given recent housing development in the Parish with little garden space provided, would undoubtedly be in great demand again.

The field also supported village bonfires on the 5th November and currently hosts the Osbaldwick Village Gala.

Ancillary uses to the public house are as a safe children's play area and football area for customers and local residents.

The field is also used by the caravan club for events at various times of the year when the whole field is used for camping and caravanning, a use seen as complimentary to the village and its rural past which brings benefits to the pub and other local businesses.

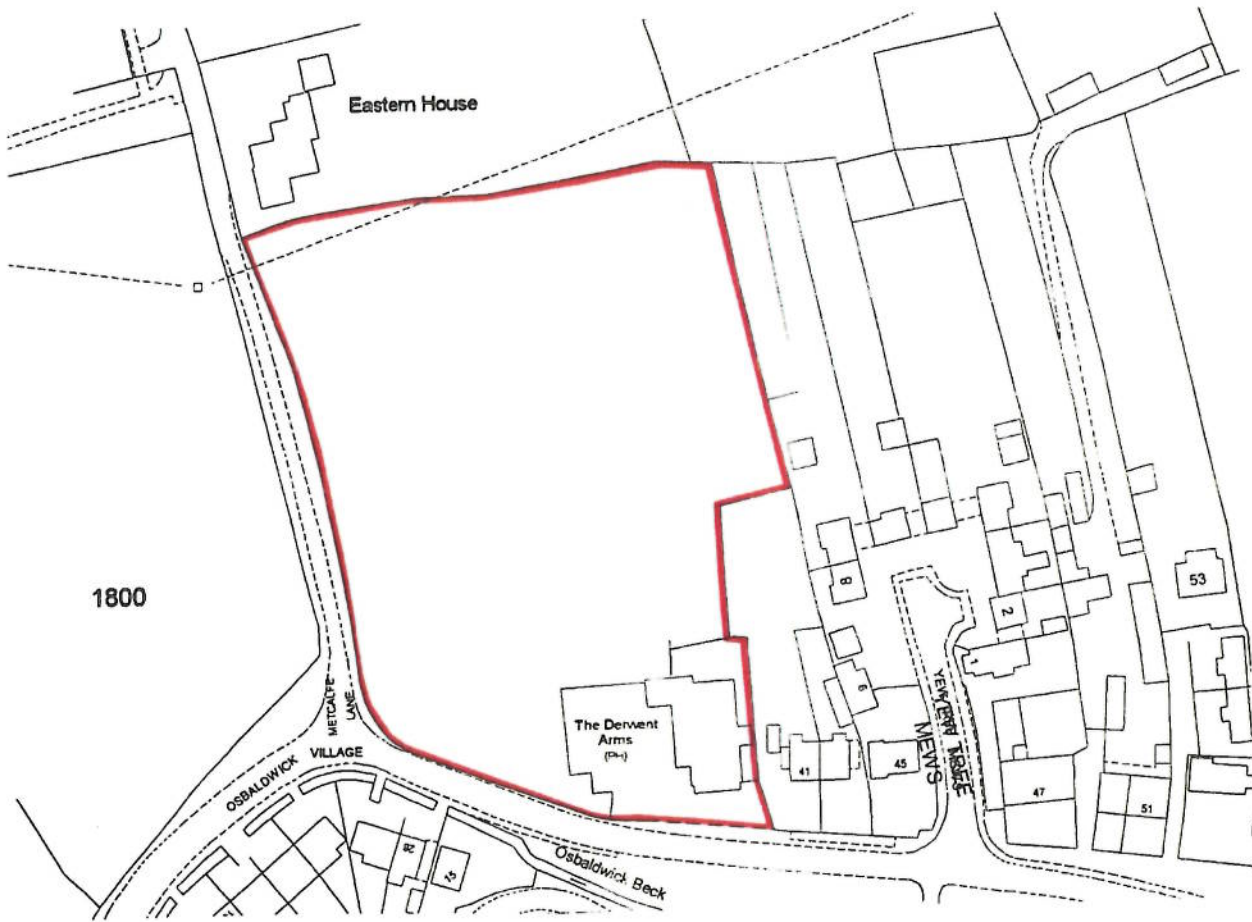
The Derwent Arms pub field is undoubtedly an integral part of the Osbaldwick Village Conservation Area structure and form giving the plot a social and environmental value.

The building and land furthers the social well being of the local community and in the case of the Caravan Club a much wider community as well.

The land furthers the sporting and recreational well being of the local community and customers of the pub as well as being used as a community focal point with the Village Gala.

SECTION 4.

H.M. LAND REGISTRY		TITLE NUMBER
		NYK 216480
ORDNANCE SURVEY PLAN REFERENCE	SE6351 SE6352	Scale 1/1250
ADMINISTRATIVE AREA : YORK		© Crown Copyright





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Current list of Assets of Community Value

1. The Golden Ball Public House, 2 Cromwell Road, York - approved March 2014.
2. The Fox Inn, 166 Holgate Road, York – approved July 2014
3. The Mitre Public House, Shipton Road, York – approved July 2014
4. The Winning Post Public House, 127-129 Bishopthorpe Road, York – approved November 2014
5. New Earswick and District Bowls Club, Huntington Road, York – approved November 2014.
6. Holgate Allotments, Ashton Lane, Holgate – approved June 2015
7. The Swan, Bishopthorpe Road, York – approved October 2015
8. The Bay Horse, Murton Way, Murton, York – approved February 2016

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14th March 2016

Decision Session – Executive Leader (incorporating Finance and Performance)

Report of the Assistant Director of Finance, Asset Management and Procurement

Endeavour House, George Cayley Drive and ADVA Building, Kettlestring Lane – Applications to remove restrictive covenants

Summary

1. This report sets out details of two applications to lift restrictive covenants of office sites on Clifton Moor for low-cost residential development. The application is in accordance with the Asset Management Policy on lifting restrictive covenants on Clifton Moor and capital receipts have been agreed in accordance with the policy.

Background

2. The Asset Management Policy on lifting restrictive covenants at Clifton Moor was approved at the Cabinet Member Decision Making Session on 7th July 2014 and a copy of this policy is attached at Annex A. Several approvals have been given at recent Cabinet and Executive Member Decision Making Sessions to lift restrictive covenants on sites at the nearby Pioneer Business Park and Aviator Courts in return for capital sums.
3. Applications have been received on two further properties located on Clifton Moor which are covered by the same restrictive policy for further use and development. Details are outlined below.

Endeavour House, George Cayley Drive

4. Trinity Services (UK) Ltd have applied to lift the restrictive covenant at Endeavour House, George Cayley Drive on Clifton Moor where the office buildings have been vacant for a considerable period of time

and a scheme has been put together for a residential development on the site. A site plan is attached at Annex B.

5. The proposal is to create 4x2 bed flat scheme within the existing office building structure to be marketed as starter homes aimed at a price to attract first time buyers.
6. The adopted Council policy has the following requirements for such an application to be considered and these are set out below together with details of how these requirements are being met.
7. Appropriate communal open space for clothes drying, secure cycle storage and bin storage etc.

Cycle and bin storage is already provided and it is proposed to enhance this to accommodate recycling requirements

Some play provision

The applicant has stated that the flats are not designed for general family housing and therefore there is no specific play provision but the flats will have dedicated outdoor terraced areas

Suitable pedestrian access

Pedestrian access will remain as existing which is directly from George Cayley Drive and also a separate pedestrian route from the car park at the rear of the building

Appropriate acoustic treatment to limit road noise etc.

Building regulations will cover the appropriate requirements. As the building is located at the far end of George Cayley Drive then passing traffic will be negligible and the property is shielded from the main road so it is considered there will be little need for any additional acoustic treatment.

8. The proposals therefore meet the requirements of this policy. However although the apartments are proposed to be sold at a reasonable figure it is the view of Housing Services that these are not 'affordable' apartments within the relevant definition and therefore, in accordance with the policy, a capital sum has been negotiated to remove the restriction. The amount which has been agreed is £13,500 and it is considered that this amount is an adequate figure to recommend for acceptance. It is directly comparable to the sum agreed for the release of the restrictive covenant on the other buildings approved by Executive Member

ADVA Building, Clifton Technology Centre, Kettlestring Lane

9. Helmsley Securities Ltd (part of the Helmsley Group) have applied to lift the restrictive covenant on the ADVA Building, Clifton Technology Centre, Kettlestring Lane on Clifton Moor where the office buildings have been vacant for over 4 years and a scheme has been put together for a residential development on the site. A site plan is attached at Annex B.
10. The proposal is to create 15 small apartments within the existing office building structure to be marketed as starter homes aimed at a price to attract first time buyers as owner occupiers.
11. The adopted Council policy has the following requirements for such an application to be considered and these are set out below together with details of how these requirements are being met.
12. Appropriate communal open space for clothes drying, secure cycle storage and bin storage etc.

This will be provided by the developer and agreed with the planning office. A standalone timber structure will be provided for bin and cycle storage.

Some play provision

Play provision will be provided in the form of open space adjacent to the building

Suitable pedestrian access

A direct pedestrian only access is not possible onto Clifton Moorgate but footpaths will be created to link to the existing footpath network to allow access to leisure, retail and medical facilities.

Appropriate acoustic treatment to limit road noise etc.

As well as being covered through building regulations this has been included as there will be a need to make the specification attractive to successfully sell the apartments in a mixed use area.

13. The proposals therefore meet the requirements of this policy. However although the apartments are proposed to be sold at a reasonable figure it is the view of Housing Services that these are not 'affordable' apartments within the relevant definition and therefore, in accordance with the policy, a capital sum has been negotiated to

remove the restriction. The amount which has been agreed is £44,262 and it is considered that this amount is an adequate figure to recommend for acceptance. It is directly comparable to the sum agreed for the release of the restrictive covenant on the other buildings approved by Executive Member

Options

14. If these proposals are not accepted then the applicants have both indicated they will either :
 - a. Decide not to proceed with their schemes which will mean the potential loss of 19 low cost apartments, or
 - b. Take the matter to the Lands Tribunal. Legal Services have previously indicated there is a reasonable chance of success although it will be costly and take a considerable length of time.
15. The option to accept the capital sums offered is therefore recommended, as it provides a capital receipt for the Council, and also potentially 19 apartments for first time buyers.

Council Plan

16. The proposed policy supports the Council policy of Get York Building, creating additional low cost housing on brownfield land.

Implications

Financial – The variation of the covenant realises a capital receipt which reflects the uplift in value of the site after the covenant has been lifted.

Human Resources (HR) – none

Equalities, Crime and Disorder and IT –Decent quality housing is fundamental to the creation of healthy, sustainable communities and due consideration needs to be given to avoid the indirect creation of sub standard housing.

Legal – The refusal to lift a covenant can be subject to further legal challenge if it can be proved that the grounds for the original covenant no longer apply.

It is noted that, in addition to receipt of the financial sum, the Council wishes to make the release of the covenant subject to the matters referred to in paragraphs 7 and 12 above. This can be included in the

formal deed releasing the covenant or, if this is objected to by the applicants, controlled through the planning process by way of conditions to any planning permission and/or the provisions of any s106 agreement which the developer would be required to enter into.

Property – Contained within the report

Other - none

Risk Management

17. There is still a risk of legal challenge if the Council refuses to lift restrictive covenants.

Recommendations

18. The Executive Member is asked to agree to the request to remove the restrictive covenants on
 - a. Endeavour House, George Cayley Drive for a capital sum of £13,500
 - b. ADVA building, Clifton Technology Centre, Kettlestring Lane for a capital sum of £44,262

Reason: To enable the provision of apartments at reasonable cost in an area of surplus office accommodation.

Contact Details

Author:

Chief Officer Responsible for the
report: Ian Floyd
Director Customers and Business
Support

Philip Callow
Head of Asset and Property
Management

**Report
Approved**



Date 3 March 2016

Specialist Implications Officer(s)

Implication Legal

Name Gerry Allen

Senior Solicitor - Property

Tel No. 552004

All

Wards Affected: *Clifton Without, Rawcliffe and Skelton*

For further information please contact the author of the report

Annexes

Annex A - Asset Management Policy on lifting of restrictive covenants at Clifton Moor.

Annex B – Site Plans.



June 2014

City of York Council

Asset Management Policy on lifting of restrictive covenants at

Clifton Moor

When York District Council sold parcels of land to create office developments at Clifton Moor in the 1980's, the authority added a number of restrictive covenants onto the sale deeds to limit the use to office only.

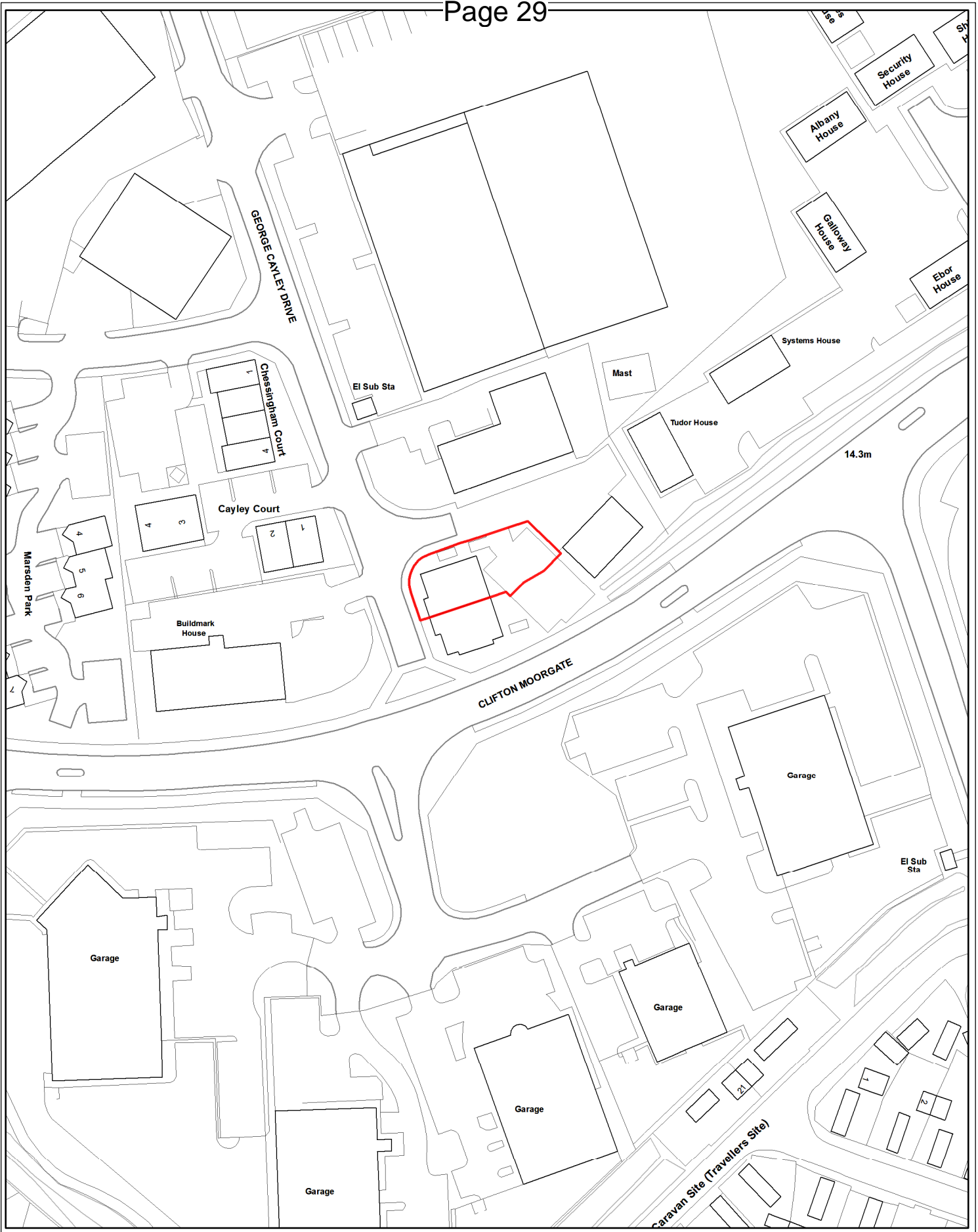
In more recent years a number of these offices have had only partial tenancies and are considered by their owners to be difficult if not impossible to let. The market for office accommodation in York is oversupplied with the quality of office accommodation that exists at Clifton Moor which is by and large moderate to poor. We are experiencing increasing demand for city centre high quality office accommodation which is currently in short supply. With regard to Clifton Moor the market has voted with its feet and there are a number of sites where CYC is being asked to vary or lift the covenants to convert them into residential schemes. CYC has now developed a policy to set out the principles that we will apply to these requests when we receive them.

Other restrictive covenants will still exist on land sales made in the past in different parts of the city. As the circumstances and the drivers around these will all be very different these should be treated on a case by case basis but the volume of these at Clifton Moor requires a specific policy framework.

Individual decisions will be made by the Cabinet Member for Finance and Performance. The following principles will be applied to those decisions:-

1. CYC will agree to lift restrictive covenants on Clifton Moor which restricted future use to office accommodation, to enable them to be used for residential accommodation, but we will only do so when there is a package of facilities to support reasonable quality of housing.

2. Future housing schemes must include
 - a. appropriate communal open space for clothes drying, secure cycle storage and bin storage etc,
 - b. Some play provision
 - c. Suitable pedestrian access,
 - d. Appropriate acoustic treatment to limit road noise etc
3. We will consider lifting the covenant without a charge for schemes that deliver affordable housing as defined in the affordable housing policy in place at the time of the request.
4. If schemes do not deliver affordable housing in accordance with our policy, we will consider the suitability of the development for housing and if we believe that it will provide accommodation units that are a reasonable standard then we will make a charge for removing the restrictive covenant and will seek to work with developers to ensure that developments consider the requirements set out above eg. acoustic treatment, proper pedestrian access, sound proofing, links through to other residential areas.
5. Overage clauses may be considered as part of any negotiations regarding the sum to be paid to lift a restrictive covenant. Where we decide to lift the covenant for free we will seek an overage clause to ensure CYC gains a share of the uplifted market value should affordable housing be sold on.
6. We will not support the lifting of the restrictive covenants where we believe that the accommodation being provided is of low or substandard quality or where the scheme creates a single isolated block of housing in an otherwise commercial or industrial setting.
7. Consideration will be given to the prevailing economic conditions and the state of the market for office accommodation across the city and specifically in Clifton Moor.
8. Developers should make a formal request to the Head of Asset Management, setting out the details of their scheme and how it meets the criteria set out above, along with a proposed financial value where appropriate.



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Endeavour House, George Cayley Drive (ANNEX B)



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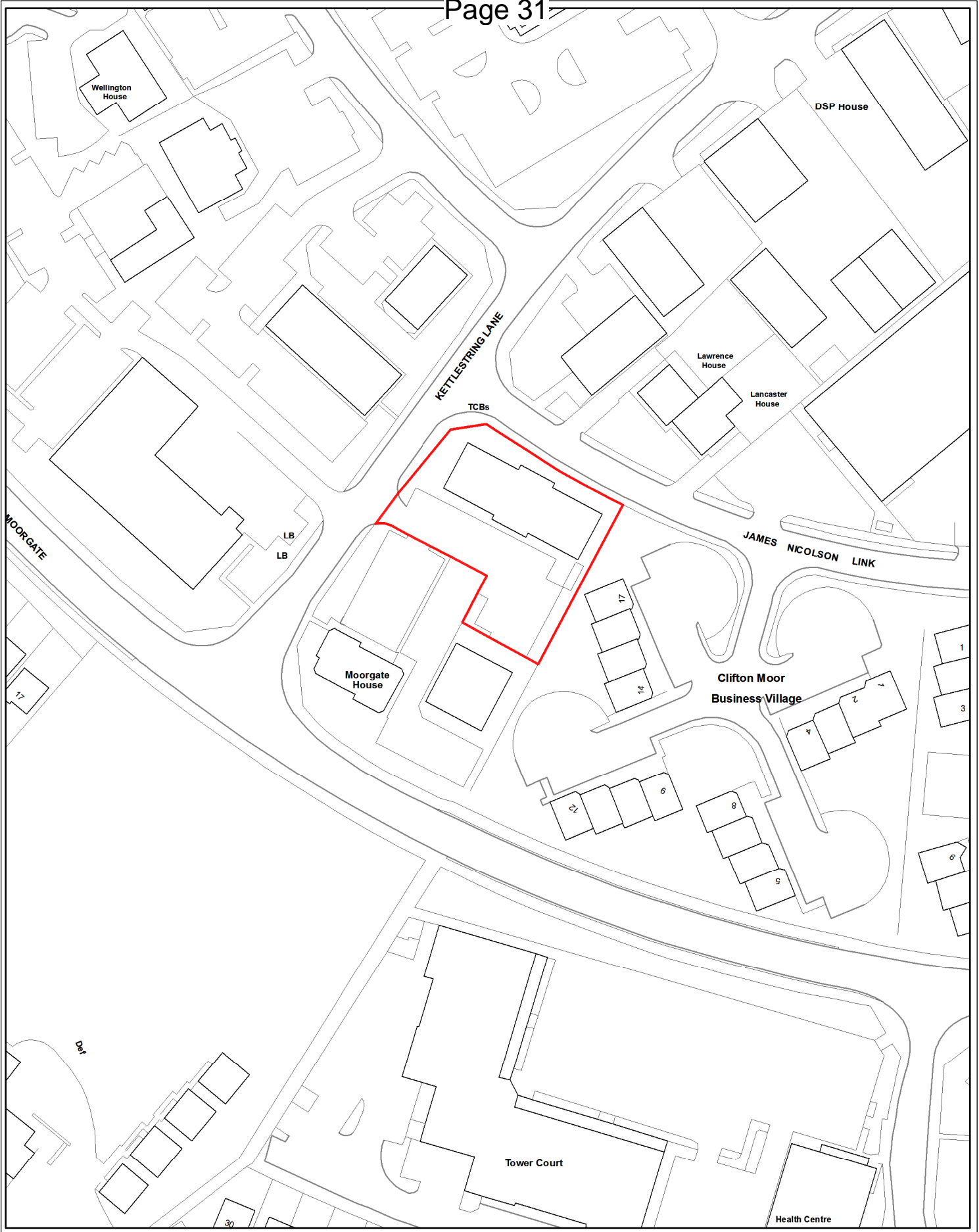
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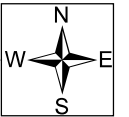
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ADVA Building, Clifton Technology Centre (ANNEX B)



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