

**Decision Session – Executive Leader
(incorporate Finance and Performance)**

19 November 2018

Report of the Corporate Director of Economy and Place

**Tramways Club, Mill Street – Application to Release a Restrictive
Covenant**

Summary

1. This report sets out details of a proposal to release of a restrictive covenant which applies to the site of the working mans' club known as the Tramways Club on Mill Street, York and which is identified on the plan in Appendix A.
2. A Developer has agreed to purchase the site from the Club, subject to the restrictive covenant being released. The developer is currently considering redeveloping the site for either a residential sale or senior living/ care scheme, although this will be subject to obtaining planning permission. A financial formula has been agreed with the developer whereby the Council (as the party with the benefit of/ right to enforce the restrictive covenant) will share in any uplift in value the site realises on its completion after deducting the new scheme's development costs.

Recommendation

3. The Executive Member is asked to agree to the request to release the restrictive covenant on the site of the Tramways Club, Mill Street to enable the site to be developed for either a residential for sale scheme or for senior living/care accommodation, subject to obtaining planning permission.

Reason: To enable the sale of the site of the Club to proceed as it has no viable future, whilst providing an opportunity for the site to be regenerated in line with the Castle Gateway vision and afford the Council with a potential future capital receipt.

Background

4. The site which the Tramways Club is situated upon was sold by the Council on 15th May 1963. On sale, the Council imposed a restrictive covenant prohibiting use of the property as anything other than; a licensed premises and further expressly prohibiting its use as a theatre; petrol station or bus station. The Council has been approached by the sites' current owners (the Tramways Club) and the developer who request that the Council agree to release the covenant so that the property can be redeveloped for either a residential "for sale" scheme or a senior living/ care scheme.
5. The Tramways Club currently has a membership of 370, down from its heyday of 3,500. The Club has concluded that they need to sell the site given the situation of having to meet ongoing running costs against the backdrop of decreasing membership and thus reduced income. Whilst the Club initially sought alternative, smaller and cheaper premises, the membership decided to put the site up for sale to prevent further financial losses and settle its outstanding debts. The Club has provisionally agreed to sell the property to the Developer.
6. The site sits within the Castle Gateway regeneration area. The building on the site has suffered from under-investment due to the decline in membership and detracts from the surrounding area, particularly the adjacent churchyard that is thought to contain the grave of Dick Turpin. The site is located on the corner of Mill Street, a short distance from Piccadilly - a run down route in to the city centre. The approved Castle Gateway masterplan proposes significant investment to bring vibrancy and life to Piccadilly, creating a new city living neighbourhood and promoting small independent traders and new apartment buildings.
7. Mill Street is to become part of a new key radial cycle route across the city, leading directly to the proposed pedestrian/cycle bridge over the River Foss and a newly revealed view of the Castle area. This will add a new prominence to the Tramways Club site, which would only serve to highlight the neglected nature of the existing building. Consequently, given there is no real prospect of a viable future for the Tramways Club the redevelopment of the site for new residential uses would help deliver the aims of the wider regeneration of the Castle Gateway area.

8. The Clubs' year end is on 30th November, and the Club wish to cease operation at that juncture. They hope to complete their sale before their Membership year end on 30th November 2018 to avoid financial complications. If the sale is not completed by that point under Club & Institute Union (CIU) rules memberships will need to be renewed and paid for. The Club has advised that following the envisaged sale in November, sale monies less debts and reserves will be distributed to the Members in time for Christmas. One of the Club's prime considerations is having their long standing members benefitting from the funds in time for Christmas. In order to proceed with the sale by that date, the developers wish to have certainty from the Council (the Council are benefactor of the covenant by virtue of the sale in 1963), that it would grant consent to remove the covenant and thus enable the site to be redeveloped subject to planning.
9. It is usual for a financial consideration to be paid in exchange for agreeing to the release of a covenant as the proposed alternative is often for a more valuable land use. In this particular circumstance however, where a revised scheme is yet to be finalised, a final development value cannot be calculated, and it is unknown if a redevelopment scheme could realise added value after allowing for development costs. A financial formula has therefore been agreed with the Developer, whereby the Council will share in any uplift in value the site realises on its completion after deducting a new scheme's development costs. This will provide the necessary certainty to the Developer to proceed with the purchase and enable the Club to sell the site, whilst setting out a potential capital receipt for the Council. The basis of the formula is set out in confidential Appendix 3.
10. The precedent of receiving a consideration in return for agreeing to the release of restrictive covenants granted historically in favour of the Council has been illustrated elsewhere in the city. Restrictive covenants in favour of the council have been released for example at Clifton Moor.

Options

11. If this proposal is not accepted then it is likely that the sale of the Club will be delayed or falls through with continuing negative financial implications to the Club.

12. It is also considered that the owner of the Site could potentially challenge a refusal by the Council to agree to the release of the covenant, by applying to the Lands Tribunal and argue that the removal of the covenant is proportionate and reasonable. The Lands Tribunal would, in that case, order the owner to pay compensation to the Council but the amount of such compensation might not be very high if the Tribunal considered that the covenant had little monetary value.
13. Legal Services have previously indicated there is a reasonable chance of such a challenge being successful, and the Tribunal process can be costly and take a considerable length of time. As such it is recommended by Property Services that the Council agree to release the restrictive covenant allowing the redevelopment of the site in line with the wider regeneration of the area (subject to obtaining planning permission) and the Council possibly benefiting from a potential future capital receipt.

Council Plan & Values

14. The proposed policy supports the Council policy of “A Prosperous City for All”.

Implications

Financial – The removal of the covenant could potentially realise a capital receipt, reflecting the uplift in value of the site after the covenant has been lifted, after allowing for development costs.

Human Resources (HR) – None

Equalities, Crime and Disorder and IT – None

Legal – The refusal by the beneficiary of a restrictive covenant to agree to the release of variation of the covenant can be overturned by the Lands Tribunal (subject to payment of such compensation to the beneficiary by the land owner as the Tribunal considers appropriate) if the land owner can persuade the Tribunal that the covenant is no longer appropriate or necessary. If the Council is prepared to release the covenant over the site up-front without receiving simultaneous payment at that point then legal arrangements will need to be put in place to secure the payment to the Council in due course of any monies that we become entitled to when the proposed redevelopment of the site is completed.

Property – Contained within the Report.

Other – None

Risk Management

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

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Report Approved



08.11.18

Specialist Implication Officer(s)

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Wards Affected: Guildhall Ward

For further information please contact the author of the report

Annexes

Appendix A Location Plan
Appendix B Photograph of Property

Confidential
Appendix C Financial Formula