

Cabinet Member Decision Making session – Finance and Performance

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

Asset Management Policy on lifting of Restrictive Covenants at Clifton Moor

Summary

1. This report sets out a proposed policy for dealing with requests to vary restrictive covenants placed on office developments at Clifton Moor.

Background

2. 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.
3. 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 quality of office accommodation that exists at Clifton Moor is by and large moderate to poor. Whilst there is increasing demand for city centre high quality office accommodation which is currently in short supply, at 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.
4. Clifton Moor as a key employment site and a reduction in office space across the city is a major concern. There is however an argument that lifting some restrictions could create more demand for the remaining space, which is currently under occupied as a result of quality and congestion issues.
5. Recent changes to the Planning Framework give office to residential conversions Permitted Development Rights which do not require planning permission. This will potentially lead to the loss of existing office

accommodation. We are unable to exert much influence over this and a blanket lifting of the current restrictions at Clifton Moor could result in us losing space we cannot then get back if it is not carefully managed.

6. CYC has now developed a policy to set out the principles that we will apply to these requests when we receive them in order to manage the overall impact.
7. 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.

Options

8. The Council has been approached by a number of landowners with a view to converting their Clifton Moor office developments into housing. Following changes to the Planning Framework in 2013 these conversions are now classed as permitted developments and as such do not require planning permission.
9. Our role as the beneficiary of the restrictive covenant is therefore our only way of applying any influence upon the conversion. The points we need to consider are ;-
 - The conversion will reduce the amount of available office space in the city.
 - There is little demand for the kind of office provision that these requests relate to – over the last few years there have been high void rates and rental values are exceedingly low.
 - There is still a massive need for increased housing provision, especially affordable housing.
 - The quality of the housing needs to be considered. Despite not being able to apply any quality standards through planning, if we agree to lift the covenant then we could be seen to be condoning poor quality or inadequate housing development.
 - How does the Council ensure it gets a fair share of any increased commercial value from private sector housing

- How does the Council encourage the appropriate level of quality housing and particularly affordable housing?
10. Legal advice has indicated that if the Council refuses to vary the covenants then landowners could appeal the decision at a tribunal under S 84 of the Law of Property Act 1925 where our decision may be overturned.
 11. The attached policy has been developed by officers from Property, Housing and Planning and is recommended as a way of ensuring that if we inevitably are losing office space and cannot influence this through the planning process then we attempt to drive as much quality into future housing developments and actively promote affordable housing.

Council Plan

12. The proposed policy supports the Council policy of Get York Building, creating additional affordable and low cost housing.

Implications

13. **Financial** – The variation of covenants can be made for a further capital receipt which reflects the uplift on value of the site after the covenant has been lifted. No assumptions have been made in the capital programme that the lifting of covenants will yield any capital receipt.

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.

Property – Contained within the report

Other - none

Risk Management

14. There is still a risk of legal challenge if the Council refuses to lift restrictive covenants. The potential risks to lifting a covenant for no fee is that we reduce a potential capital receipts (probably relatively minor in value) – but in both cases this is felt to be LOW.

Recommendations

15. The Cabinet Member is asked to agree the adoption of the attached policy in considering lifting restrictive covenants on office developments at Clifton Moor.

Reason: To ensure the Council has a process in place for dealing with any applications to vary restrictive covenants which support its own strategies and priorities

Contact Details

Author:

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

Tracey Carter
Title - AD Finance Property Procurement

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Specialist Implications Officer(s)

Implication Legal
Name Gerry Allen
Senior Solicitor - Property
Tel No. 552004

Wards Affected: *Clifton Without, Rawcliffe and Skelton*

All

For further information please contact the author of the report

Annexes

Annex 1 - Asset Management Policy on lifting of restrictive covenants at Clifton Moor