

Leader Decision Session

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

Aviator Court Units A and E – Application to remove restrictive covenant

Summary

1. This report sets out details of an application to lift the restrictive covenant of an office site on Aviator Court at 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 a capital receipt has 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 in return for capital sums.
3. An application has been received by Duchy Properties Ltd to lift the restrictive covenant on Sites A and E at Aviator Court 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.
4. The proposal is to create 20 small apartments, 14 one bed and 6 two-bed within the existing office building structure to be marketed as starter homes aimed at a price to attract first time buyers.

5. 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.
6. Appropriate communal open space for clothes drying, secure cycle storage and bin storage etc.

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

Some play provision

There is a proposal to provide small terraces and gardens to some of the units together with a small communal play area

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. It is proposed to complement the existing low level dense hedge planting with new medium height trees and shrubs to improve screening and acoustic protection.

7. 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 £75,000 in total for both units 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 Cabinet Member

Options

8. If this proposal is not accepted then the applicant have indicated they will either:

- a. Decide not to proceed with the scheme which will mean the potential loss of 20 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.
9. The option to accept the capital sum offered is therefore recommended, as it provides a capital receipt for the Council, and also potentially 20 apartments for first time buyers.

Council Plan

10. 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 paragraph 6 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

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

Recommendations

12. The Executive Member is asked to agree to the request to remove the restrictive covenant in return for the capital sum of £75,000.

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

Contact Details

Author:

Philip Callow
Head of Asset and
Property Management

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

Report
Approved



Date 7 October
2015

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 A - Asset Management Policy on lifting of restrictive covenants at Clifton Moor.
Annex B – Site Plan.