

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.