

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

**12 June 2017**

Report of the Corporate Director of Economy and Place  
Portfolio of the Executive Leader, Finance and Performance

**Units 5 and 6, Marsden Park and Units B, C, D and F Aviator Court,  
Clifton Moor – Applications to remove Restrictive Covenant**

**Summary**

1. This Report sets out details of two applications to lift the restrictive covenant of an office site on Clifton Moor to allow a low-cost residential development. The applications are 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.

**Recommendations**

2. The Executive Leader is asked to agree to the request to remove the restrictive covenant on
  - a. Units 5 and 6, Marsden Park, James Nicolson Link for a capital sum of £18,400
  - b. Units B, C, D and F, Aviator Court for a capital sum of £106,700

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

**Background**

3. The Asset Management Policy on lifting restrictive covenants at Clifton Moor was approved at the Cabinet Member Decision Making

Session on 7 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 nearby, amongst them are Pioneer Business Park, other units at Aviator Court and Marsden Park, and this has been in return for capital sums.

4. Two applications have been received for Units B, C, D and F, Aviator Court and Units 5 and 6 at Marsden Park, Clifton Moor which are covered by the same restrictive policy for further use and development. Details are outlined below.

#### Unit 5 and 6, Marsden Park, James Nicolson Link

5. Bootham Developments have applied to lift the restrictive covenant at Units 5 and 6, Marsden Park 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.
6. The proposal is to create 4 x 2 bed apartments within the existing office building structure to be marketed at first time buyers as starter homes. This development is a repeat of the scheme they have completed at Unit 4 previously and a plan of the proposal is attached at Annex C.
7. 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.

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

The Units are located within the middle terrace of three properties. There is existing bin storage and cycle storage is to be included within this area. There is a large communal open space area at the rear and side of the property which can be utilised as a drying area. Each apartment will have 2 car parking spaces within five designated spaces per Unit and the fifth space can be used for secure cycle storage as an alternative as the communal open space area is within the ownership of a management company and the developers must seek a negotiated agreement with them.

### Some play provision

The applicants have stated that the apartments are not designed for general family housing and therefore there is no specific play provision.

The applicants have advised that there is a public park located adjacent to Clifton Moor Church and Community Centre on Oakdale Road which is within a 5 minute walk of the Unit.

### Suitable pedestrian access

Pedestrian access will remain as existing which is directly from James Nicolson Link.

### Appropriate acoustic treatment to limit road noise, etc.

Building regulations will cover the appropriate requirements. The Units are located in the middle of Marsden Park and not directly adjacent to the main roads. Sound block acoustic board will be applied internally to all walls and floors.

### Units B, C, D and F, Aviator Court

8. Duchy Properties Ltd. have applied to lift the restrictive covenant at Units B, C, D and F, 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 D. They previously applied for the lifting of the restrictive covenant when they developed Phase 1 (Units A and E) and this development is Phase 2.
9. The proposal is to create 10 x 1 bed and 15 x 2 bed apartments within the existing office building structure to be marketed at first time buyers as starter homes. A plan of the proposal is attached at Annex E.
10. 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.

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

The communal amenity area which was provided as part of Phase 1 is paved with a central planted area and provision for clothes drying which will be available for the Phase 2 residents.

Secure cycle and bin storage areas will be provided in new single-storey timber clad structures which will also house communal refuse/recycling stores.

#### Some play provision

Play provision was provided as part of Phase 1 and includes playground activities and benches. The ground floor apartments will also have access to small gardens/patio areas.

#### Suitable pedestrian access

Pedestrian access is provided via existing footpaths linking to Clifton Moorgate and Amy Johnson Way.

#### Appropriate acoustic treatment to limit road noise, etc.

Building regulations will cover the appropriate requirements. All existing windows will be replaced with ones providing a higher acoustic specification. An appropriate noise insulation scheme will be used and the low level dense hedge planting will be supplemented with new medium height trees and shrubs to improve screening and acoustic protection to those properties facing the main road.

11. The proposals for both Marsden Park and Aviator Court 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 amounts which have been agreed are £18,400 for Units 5 and 6, Marsden Park and £106,700 for Units B, C, D and F, Aviator Court and it is considered that these amounts are adequate figures to recommend for acceptance. They are directly comparable to the sums agreed for the release of the restrictive covenant on the other schemes approved by the Executive Member.

### **Consultation**

12. The proposals detailed in this Report have been circulated to members of the Capital Asset Board and their recommendation is to report the matter at the Executive Leader Decision Session for approval.

## Options

### 13. Option 1

The Executive Leader agrees to the request to remove the restrictive covenant on:

- a. Units 5 and 6, Marsden Park, James Nicolson Link for a capital sum of £18,400
- b. Units B, C, D and F, Aviator Court for a capital sum of £106,700

### 14. Option 2

The Executive Leader does not agree to the request at Option 1 and retains the status quo

## Analysis

### 15. Option 1

If Option 1 is proceeded with it will enable the provision of apartments at a reasonable cost in an area of surplus office accommodation and at the same time will provide a capital receipt for the Council.

### 16. Option 2

If the status quo is retained then the applicants have indicated they will either:

- a. Decide not to proceed with their scheme which will mean the potential loss of 29 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.

17. The option to accept the capital sums offered is therefore recommended, as it provides a capital receipt for the Council and also potentially 29 apartments for first time buyers.

## **Council Plan**

18. The proposals support the Council policy of Get York Building, creating additional low cost housing on brownfield land.

## **Council Values**

19. The proposals meet the Council Values in terms of:
  - Supporting and enabling individuals and our communities
  - Being ambitious for our communities and our city
  - Delivering on our commitments

by providing low cost housing.

## **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. The capital receipt is used to support the Council's overall capital programme.

**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 sums, the Council wishes to make the release of the covenant subject to the matters referred to in paragraphs 6 and 9 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.

**Crime and Disorder** - None

**Information Technology (IT)** – None

**Property** – Contained within the Report.

**Other** – None

## **Risk Management**

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

21. If this challenge was successful then the applicants could proceed with the proposal and the Council would not receive the capital payments. However the likelihood of this happening is very low as the applicants have agreed to progress as set out in this Report.

## **Contact Details**

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**Chief Officer Responsible for the report:**  
Neil Ferris  
Corporate Director Economy and Place

**Report**  **Date** 31 May 2017  
**Approved**

## **Specialist Implications Officer(s)**

Financial  
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Legal  
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**Wards Affected:** Rawcliffe and Clifton Without

**All**

**For further information please contact the author of the report**

**Background Papers:**

The Asset Management Policy on Lifting Restrictive Covenants at Clifton Moor, Cabinet Member Decision Making Session, 7 July 2014 (Annex A).

**Annexes**

Annex A – See above at Background Papers

Annex B – Site Plan, Units 5 and 6 Marsden Park, Clifton Moor

Annex C – Development Proposals, Units 5 and 6 Marsden Park, Clifton Moor

Annex D - Site Plan, Units B, C, D and F Aviator Court, Clifton Moor

Annex E - Development Proposals, Units B, C, D and F Aviator Court, Clifton Moor