

## **Leader (incorporating Finance and Performance) Decision Session**

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

### **Pioneer Business Park Units 4 and 7 – 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 the Pioneer Business Park 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 7<sup>th</sup> July 2014 and a copy of this policy is attached at Annex A. Approvals were given at the Cabinet Member Decision Making Sessions on 17<sup>th</sup> September 2014 and 19<sup>th</sup> February 2015 to lift restrictive covenants on sites at the Pioneer Business Park following a request from the Helmsley Group in return for a capital sum.
3. An application has been received by the Helmsley Group to lift the restrictive covenant on further adjacent sites (Units 4 and 7 which will complement the existing schemes Units 2 and 3) on the Pioneer Business Park at 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 31, mainly single but some two bedroom, small apartments 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 Helmsley Group in conjunction with the conversion works being carried out on the adjoining building as reported previously.

#### Some play provision

See above comment.

#### Suitable pedestrian access

A direct pedestrian only access will be created onto Clifton Moorgate past the adjoining building which will allow easy access to leisure, retail and medical facilities without the need to go via the remainder of the office park.

#### 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.

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 £122,250 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 adjoining buildings approved by Cabinet Member on 17<sup>th</sup> September 2014 and 19<sup>th</sup> February 2015.

### **Options**

8. If this proposal is not accepted then the Helmsley Group have indicated they will either :
  - a. Decide not to proceed with the scheme which will mean the potential loss of 31 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. Helmsley have indicated that, as they want to progress both schemes together now, they have no desire to go down this route.
9. The option to accept the capital sum offered is therefore recommended, as it provides a capital receipt for the Council, and also potentially 31 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 Leader is asked to agree to the request to remove the restrictive covenant in return for the capital sum of £122,250.

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

## Contact Details

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### Chief Officer Responsible for the report:

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Support

Report  
Approved

Date *Insert Date*

### Specialist Implications Officer(s)

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

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.