

**Notice of public
Decision Session - Cabinet Leader, Finance & Performance**

To: Councillor Williams

Date: Thursday, 19 February 2015

Time: 2.00 pm

Venue: The King Richard III Room (GO49) - West Offices

AGENDA

Notice to Members – Calling In:

Members are reminded that, should they wish to call in any item* on this agenda, notice must be given to Democratic Services by:

4.00pm on Monday 23 February 2015 if an item is called in after a decision has been taken.

*With the exception of matters that have been subject of a previous call in, require Full Council approval or are urgent which are not subject to the call in provisions. Any called in items will be considered by the Corporate and Scrutiny Management Committee.

Written representations in respect of items on this agenda should be submitted to Democratic Services by **5.00pm on Tuesday 17 February 2015**.

1. Declarations of Interest

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. Exclusion of Press and Public

To consider the exclusion of the press and public from the meeting during consideration of annex C of agenda item 5 (Pioneer Business Park – Application to remove restrictive covenant) on the grounds that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). This information is classed as exempt under paragraph 3 of Schedule 12A to Section 100A of the Local Government Act 1972 (as revised by The Local Government (Access to Information) (Variation) Order 2006).

3. Minutes (Pages 1 - 8)

To approve and sign the minutes of the meetings held on 11 December 2014 and 22 December 2014.

4. Public Participation

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. The deadline for registering is **5:00 pm on Wednesday 18 February 2015**.

Filming, Recording or Webcasting Meetings

Please note this meeting will be filmed and webcast and that includes any registered public speakers, who have given their permission. This broadcast can be viewed at <http://www.york.gov.uk/webcasts>.

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (whose contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at http://www.york.gov.uk/downloads/download/3130/protocol_for_webcasting_filming_and_recording_of_council_meetings

**5. Pioneer Business Park - Application to (Pages 9 - 18)
remove restrictive covenant**

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.

6. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Jayne Carr

Contact Details:

Telephone – (01904) 552030

Email – jayne.carr@york.gov.uk

For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

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City of York Council

Committee Minutes

Meeting	Joint Decision Session - Cabinet Leader, Finance & Performance and Cabinet Member Environmental Services, Planning and Sustainability
Date	11 December 2014
Present	Councillors Williams and Merrett

22. Declarations of Interest

The Cabinet Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests they may have in the business on the agenda. Councillor Merrett declared a personal interest in agenda item 4 (request for an article 4 direction relating to The Punch Bowl public house), as an occasional user of the premises. Councillor Williams declared a personal interest as he had also visited the premises.

23. Minutes

Resolved: That the minutes of the Decision Sessions – Cabinet Member Environmental Services, Planning and Sustainability held on 13 October 2014 and 30 October 2014 be approved and signed as a correct record.

24. Public Participation

It was reported that there were three registrations to speak at the meeting under the Council's Public Participation Scheme. The registrations were in respect of agenda item 4 – Request for an Article 4 Direction relating to The Punch Bowl public house, Lowther Street, York.

Mr Nick Love spoke on behalf of York CAMRA and the patrons of The Punchbowl, and as the author of the article 4 application.

He stated that Members had demonstrated that there was a will to try to retain The Punchbowl as community facility. A decision to make an Article 4 Direction in respect of the Punch Bowl would be welcomed by independent traders, people who used the public house, University of St John sports clubs and the Gravers Mental Health Residential Home who used the premises in rehabilitation. Mr Love stated that the Punch Bowl was a unique facility in the community and that he did not believe that the Council would be required to pay compensation should a decision be taken to grant the application. He urged that the Cabinet Members make an Article 4 Direction.

Ms Denise Craghill spoke on behalf of The Groves Association. She stated that The Punch Bowl was a highly valued and much used local amenity. It was a large building with activity spaces which were well used. There would be a negative impact on the community if it were to be replaced by a supermarket as the area was already well served by shops of that nature. Ms Craghill stated that off-licence sales could also cause anti-social behaviour and it was questionable as to whether licensing conditions could address this matter. Concerns were also raised regarding traffic and highways issues that could arise.

Mr Paul Crossman spoke as a publican and in support of the application for an Article 4 Direction. He gave details of the situation nationally and expressed concern at the impact on the local community if The Punch Bowl were to be replaced by a supermarket. He stated that this would be hugely damaging and that this should be challenged.

25. Request for an Article 4 Direction relating to The Punch Bowl public house, Lowther Street, York

The Cabinet Members considered a request from the York Branch of CAMRA that the Council make an immediate Article 4 Direction of the Town and Country Planning (General Permitted Development) Order 1995 to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York, from its existing use as a public house (Class A4) to a shop (Class A1).

Members noted the officer comments contained in the report, including the legal implications.

The Cabinet Members stated that they would wish to protect this well used public facility if possible and that there was already a more than adequate number of shops in the area, nevertheless it was important that the decision they took did not put the Council at risk financially. For this reason they would wish to adjourn the meeting to receive further written legal advice on the following issues:

- Whether an Article 4 direction could be conditioned to state that the premises must be used as a community facility.
- The risks to the Council if it did determine that exceptional circumstances existed and made the Article 4 direction, but subsequently revoked the order before an application had been submitted.

The meeting was to be reconvened at the earliest opportunity.

Resolved: That a decision on whether or not to make an Article 4 Direction in respect of the Punch Bowl public house, 134 Lowther Street, York be deferred.

Reason: To enable further written legal advice to be provided.

Cabinet Member

[The meeting started at 1.00 pm and finished at 1.20 pm].

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Meeting	Cabinet Member for Transport, Planning & Economic Development, in consultation with the Cabinet Leader, Finance and Performance
Date	22 December 2014
Present	Councillors Williams and Levene
In Attendance	Councillors Steward, Warters and Watson

26. Declarations of Interest

[Reconvened meeting following the adjournment of the meeting on 11 December 2014]

At this point in the meeting, the Cabinet Members were asked to declare any personal, prejudicial or disclosable pecuniary interests they may have in respect of business on the agenda. No further interests were declared.

27. Exclusion of Press and Public

Resolved: That it was agreed to exclude the press and public from the meeting during consideration of Annex B to agenda item 5 (Request for an Article 4 Direction relating to The Punch Bowl public house, Lowther Street, York) on the grounds that it contained information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. This information is classed as exempt under paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972 (as revised by The Local Government (Access to Information) (Variation) Order 2006).

28. Minutes [This Item Was Dealt With On 11 December 2014]

29. Public Participation

Nick Love spoke on behalf of York Campaign for Real Ale (CAMRA), the patrons of the Punch Bowl and as author of the Article 4 application. He expressed concern that the legal advice prepared for the meeting was exempt which prevented him from speaking to counter any advice provided for Members. He reiterated his previous comments stating that from his research he did not believe that the Council would be required to pay compensation should a decision be taken to grant the application. He asked Members to protect a vital community asset and make an Article 4 Direction.

Paul Crossman spoke on behalf of the licensing trade in the city asking Members to support the making of an Article 4 Direction in order to protect the Punch Bowl public house a valued community asset. He referred to the cautious advice provided by Officers but requested Members to make a stance for public houses in the city.

30. Request For An Article 4 Direction Relating To The Punch Bowl Public House, Lowther Street, York

The Cabinet Member for Transport, Planning & Economic Development, in consultation with the Cabinet Leader, Finance and Performance, considered a request from the York branch of CAMRA for the Council to make an immediate Article 4 Direction in respect of the Punch Bowl public house in Lowther Street, York.

It was noted that the Decision Session on 11 December 2014 had been adjourned for receipt of the following additional legal advice in respect of CAMRA's request:

- Whether an Article 4 direction could be conditioned to state that the premises must be used as a community facility.
- The risks to the Council if it did determine that exceptional circumstances existed and made the Article 4 direction, but subsequently revoked the order before an application had been submitted.

Consideration was given to a privileged legal advice note prepared by the Council's Senior Solicitor in relation to the above request.

The Cabinet Members, whilst acknowledging the additional legal advice, referred to the numerous representations received from residents strongly opposed to the replacement of the public house with a convenience store. They also expressed their sympathy with residents and earlier speakers in respect of the valuable community asset the Punch Bowl provided. They had regard to the concerns of residents regarding the traffic impacts of a change of use to a shop and considered that in the circumstances such a change of use should be considered in more depth through the determination of a planning application. Following further discussion it was

Resolved: That the Cabinet Member for Transport, Planning & Economic Development, in consultation with the Cabinet Leader, Finance & Performance agree that exceptional circumstances exist and that a change of use of the premises would constitute a threat to the amenity of the area and agree to:

- (i) Use the Council's discretionary power to make an immediate Article 4 Direction under the Town and Country Planning (General Permitted Development) Order 1995 to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1) ¹.
- (ii) Request Officers to prepare a report to assist with similar future requests outlining a longer term strategy for the Council. ²

Reasons: (i) That exceptional circumstance exist to show that a change of use would harm the amenity and the proper planning of the area.

- (ii) To provide a strategy to cover similar future requests for Article 4 Directions.

Action Required

- 1. Proceed with the making of an immediate Article 4 Direction. JC, AH
- 2. Commence the preparation of a strategy to deal with similar future requests. JC, AH

Cllr D Levene, Chair

[The meeting started at 5.40 pm and finished at 5.50 pm].

19th February 2015

Leader Decision Making session – Finance and Performance

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

Pioneer Business Park – 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 7th July 2014 and a copy of this policy is attached at Annex A. Approval was given at the Cabinet Member Decision Making Session on 17th September 2014 to lift a restrictive covenant on a site at the Pioneer Business Park following a request from Helmsley Group in return for a capital sum.
3. A further application has been received by the Helmsley Group to lift the restrictive covenant on a smaller adjacent site 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 6 single 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 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. Details of this sum are contained in the confidential Annex C 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 building which was approved by Cabinet Member on 17th September 2014.

Options

8. If this proposal is not accepted then the Helmsley Group have indicated they will either

9. Decide not to proceed with the scheme which will mean the potential loss of 6 low cost apartments, or

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.

10. The option to accept the capital sum offered is therefore recommended, as it provides a capital receipt for the Council, and also potentially 6 apartments for first time buyers.

Council Plan

11. The proposed policy supports the Council policy of Get York Building, creating additional 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.

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

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

Recommendations

13. The Cabinet Member is asked to agree to the request to remove the restrictive covenant in return for the capital sum detailed in the confidential annex.

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 10 February
2015

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 Plan
Annex C – Confidential details of the proposed transaction



June 2014

City of York Council

Asset Management Policy on lifting of restrictive covenants at

Clifton Moor

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.

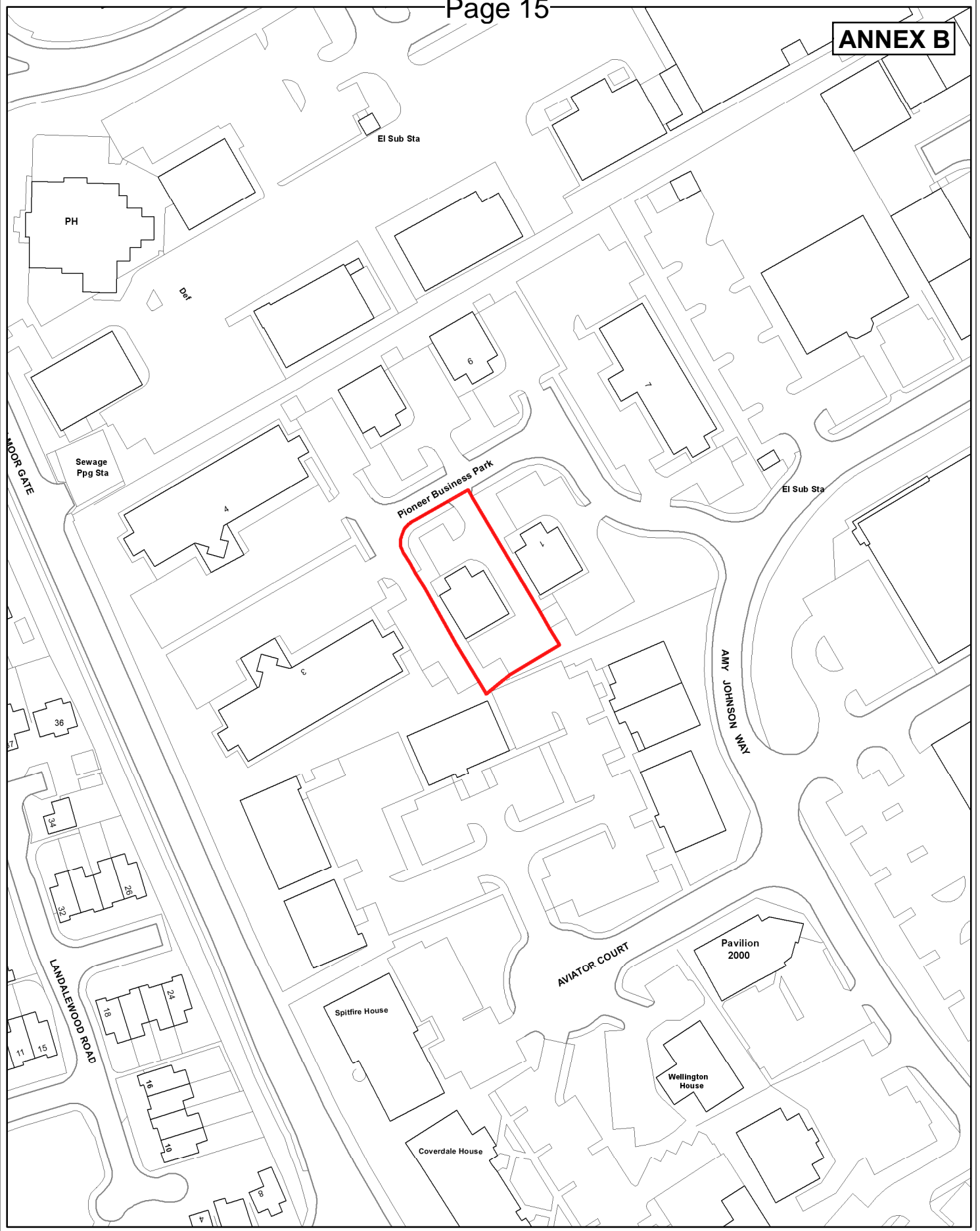
In more recent years a number of these offices have had only partial tenancies and are considered by their owners to be difficult if not impossible to let. The market for office accommodation in York is oversupplied with the quality of office accommodation that exists at Clifton Moor which is by and large moderate to poor. We are experiencing increasing demand for city centre high quality office accommodation which is currently in short supply. With regard to 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. CYC has now developed a policy to set out the principles that we will apply to these requests when we receive them.

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.

Individual decisions will be made by the Cabinet Member for Finance and Performance. The following principles will be applied to those decisions:-

1. CYC will agree to lift restrictive covenants on Clifton Moor which restricted future use to office accommodation, to enable them to be used for residential accommodation, but we will only do so when there is a package of facilities to support reasonable quality of housing.

2. Future housing schemes must include
 - a. appropriate communal open space for clothes drying, secure cycle storage and bin storage etc,
 - b. Some play provision
 - c. Suitable pedestrian access,
 - d. Appropriate acoustic treatment to limit road noise etc
3. We will consider lifting the covenant without a charge for schemes that deliver affordable housing as defined in the affordable housing policy in place at the time of the request.
4. If schemes do not deliver affordable housing in accordance with our policy, we will consider the suitability of the development for housing and if we believe that it will provide accommodation units that are a reasonable standard then we will make a charge for removing the restrictive covenant and will seek to work with developers to ensure that developments consider the requirements set out above eg. acoustic treatment, proper pedestrian access, sound proofing, links through to other residential areas.
5. Overage clauses may be considered as part of any negotiations regarding the sum to be paid to lift a restrictive covenant. Where we decide to lift the covenant for free we will seek an overage clause to ensure CYC gains a share of the uplifted market value should affordable housing be sold on.
6. We will not support the lifting of the restrictive covenants where we believe that the accommodation being provided is of low or substandard quality or where the scheme creates a single isolated block of housing in an otherwise commercial or industrial setting.
7. Consideration will be given to the prevailing economic conditions and the state of the market for office accommodation across the city and specifically in Clifton Moor.
8. Developers should make a formal request to the Head of Asset Management, setting out the details of their scheme and how it meets the criteria set out above, along with a proposed financial value where appropriate.



CBSS
*Asset & Property
Management*

Pioneer Business Park Annex B



SCALE 1:1,250

DRAWN BY: DH

DATE: 09/02/2015

Originating Group:

Asset & Property Management

Drawing No.

G00329_2

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Decision Session – Cabinet Leader, Finance and Performance

Thursday 19 February 2015

Annex of Additional Comments received from Members and the Public since the agenda was published.

Agenda Item	Report	Received From	Comments
5.	Pioneer Business Park – Application to remove restrictive covenant	The Liberal Democrat Group	The Liberal Democrat Group support the proposal to lift the restrictive covenant for the office site on the Pioneer Business Park. Replacing offices for housing in this way will help deliver much needed housing and alleviate pressure on the Green Belt. We would encourage the adoption of a broader citywide policy on this issue rather than the current case-by-case approach.

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