

## **Decision Session Executive Member Finance and Performance**

Report of the Corporate Director Economy and Place

### **Applications to remove Restrictive Covenant Units 4 and 9, Marsden Park, Clifton Moor Buildmark House, George Cayley Drive, Clifton Moor**

#### **Summary**

1. This report sets out details of three applications to lift the restrictive covenants of office sites on Clifton Moor to allow 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.

#### **Background**

2. 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, Aviator Court and Endeavour House, and this has been in return for capital sums.
3. Applications have been received for Units 4 and 9 at Marsden Park, Clifton Moor and Buildmark House, George Cayley Drive, Clifton Moor which are covered by the same restrictive policy for further use and development. Details are outlined below.

#### Unit 9, Marsden Park, James Nicolson Link

4. Messrs. D. Rhodes, A. Sykes and N. Speakman have applied to lift the restrictive covenant at Unit 9, Marsden Park on Clifton Moor where the office building has 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 2 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 C.
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.

The Unit is located at the southern end of a terrace of three properties which is also the southern end of Marsden Park. It is proposed to use the grassed area on the southern elevation of the Unit for secure cycle storage, bin storage and clothes drying space. This area is screened by the hedge boundary. Each apartment will also have a tumble dryer included in the development. Each apartment will have 2 car parking spaces and there is a fifth space which can be used for secure cycle storage as an alternative to the side grassed area.

To the rear of the Unit is another grassed area which is available for communal open space. The proposal includes a communal paved area directly to the rear of the Unit which will be screened from the remaining block.

#### 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, but the flats will have a dedicated outdoor terraced area.

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. As the building is located at the far end of Marsden Park any noise from traffic will come from Clifton Moorgate which is directly adjacent. The applicants have advised that due to the change from office to residential use there will be a reduction in road traffic movements within Marsden Park. Existing dense trees and shrubs at the Clifton

Moorgate boundary will reduce potential road noise, all windows will be replaced with a higher specification triple glazing and sound block acoustic board will be applied internally to all walls and floors.

#### Unit 4, Marsden Park, James Nicolson Link

8. Bootham Developments have applied to lift the restrictive covenant at Unit 4, Marsden Park on Clifton Moor where the office building has 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.
9. The proposal is to create 2 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 D.
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.
11. Appropriate communal open space for clothes drying, secure cycle storage and bin storage, etc.

The Unit is located at the end of 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 and there is a fifth space which 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. The entrance forecourt will be improved to allow better disabled access.

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

Building regulations will cover the appropriate requirements. The Unit is 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.

### Buildmark House, George Cayley Drive, Clifton Moor

12. Helmsley Group Ltd have applied to lift the restrictive covenant at Buildmark House, George Cayley Drive on Clifton Moor where the office building has 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 E.
13. The proposal is to create 16 apartments within the existing office building structure to be marketed at first time buyers as starter homes.
14. 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.
15. Appropriate communal open space for clothes drying, secure cycle storage and bin storage, etc.

It is confirmed that there will be an external space for clothes drying and it is also the intention to give a number of the ground floor flats private gardens and outdoor areas. Cycle and bin storage will also be provided, either as in a shared, covered area or private for each flat where feasible.

### Some play provision

An exterior garden area for shared use will be provided.

### Suitable pedestrian access

Pedestrian access will be possible directly onto Clifton Moorgate close to a pedestrian crossing point.

Appropriate acoustic treatment to limit road noise, etc.

Building regulations will cover the appropriate requirements.

16. All of these 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 following amounts have therefore been agreed with the applicants which are directly comparable to the sums agreed for the release of the restrictive covenant on the other schemes approved by the Executive Member

- a. Unit 4, Marsden Park - £9,200
- b. Unit 9, Marsden Park - £9,200
- c. Buildmark House, George Cayley Drive - £45,000

### **Options**

17. If these proposals are not accepted then the applicants have indicated they will either:

- a) Decide not to proceed with their schemes 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.

18. The option to accept the capital sums offered is therefore recommended, as it provides a capital receipt for the Council and also potentially 20 apartments for first time buyers.

### **Council Plan**

19. 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 sums, the Council wishes to make the release of the covenant subject to the matters referred to in paragraphs 7, 11 and 15 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**

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

## **Recommendations**

21. The Executive Member is asked to agree to the request to remove the restrictive covenant on

- a) Units 4 and 9, Marsden Park, James Nicolson Link for a capital sum of £9,200 for each application
- b) Buildmark House, George Cayley Drive for a capital sum of £45,000

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:**  
Neil Ferris  
Corporate Director Economy and Place

**Report Approved**

**Date:** 14-11-16

## Specialist Implications Officer(s)

Legal  
Gerry Allen  
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**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 restrictive covenants at Clifton Moor
- Annex B Site Plan – Units 4 and 9 Marsden Park
- Annex C Unit 9, Marsden Park Proposal Plan
- Annex D Unit 4, Marsden Park Proposal Plan
- Annex E Site Plan – Buildmark House, George Cayley Drive