

The Vale of Glamorgan Council

Cabinet Meeting: 23 May, 2016

Report of the Cabinet Member for Regeneration and Education

Release of Restrictive Covenant on Land Adjacent to St Joseph's RC Primary School, Penarth

Purpose of the Report

1. To request that Cabinet approve the removal of a restrictive covenant on privately owned land adjacent to St Joseph's RC Primary School which prevents house building on the site.

Recommendations

1. That Cabinet approves the release of a restrictive covenant relating to land to the south of St Joseph's RC Primary School which limits the use of the land to agricultural or public open space.
2. That the Head of Financial Services be authorised to obtain an independent valuation for the release of the restrictive covenant and negotiate with the freehold landowners to agree terms for releasing the covenant.
3. That the Head of Legal Services be authorised to enter into all necessary documentation or agreements in order to complete and execute the release of the restrictive covenant.
4. That the sum received by the Council to release the covenant is held in the ring fenced Education Capital Receipts Reserve.

Reasons for the Recommendations

1. To allow housing development on the site subject to gaining planning consent for the development.
2. To progress the release of the restrictive covenant.
3. To finalise the release of the restrictive covenant.
4. To support future school investment projects.

Background

2. The land to the south of the school off Sully Road was sold by South Glamorgan County Council in 1985. The sales agreement included a restrictive covenant limiting

the use of the land by the new owner to agricultural, fields or public open space. Restrictive covenants are not time limited and pass with the sale of the land to future purchasers; they can only be removed by the party initially imposing the covenant.

3. Prior to the sale by South Glamorgan County Council the site was under the remit of the Education Department whose successor is the Directorate of Learning and Skills.
4. Since 1985 the current owners have used the land for agricultural purposes as most other potential uses were prohibited by the restrictive covenant.
5. The site measuring approximately 5.89 acres is included within the draft Local Development Plan as a potential housing site and has received strong interest from a housing developer. The Council has been approached by the current landowner with a request to release the restrictive covenant to allow the housing development to progress.
6. The Council's Planning Committee resolved to approve a full planning application (reference 2014/00460/FUL) for the residential development of the site on 3 September 2015 subject to the signing of a section 106 legal agreement which is currently being finalised.

Relevant Issues and Options

7. The Council can agree to the removal of the restrictive covenant if it is no longer considered to be a benefit to the Council. This would allow the current owner to develop the site for housing or any other purpose, subject to planning approval.
8. The site is included in the draft Local Development Plan as an allocated housing site but cannot be developed due to the restrictive covenant on the land. Releasing the covenant has a financial value to the landowner which can be valued in accordance with case law in this area.
9. Officers within Learning and Skills and the Estates Department are of the opinion that the restrictive covenant is no longer of benefit to the Council. The preferred option is to undertake an independent valuation to release the covenant and negotiate with the current landowner to achieve this receipt which would be transferred to the Education Capital Receipts reserve.

Resource Implications (Financial and Employment)

10. All costs incurred in releasing the covenant are to be met by the landowners.
11. As previously agreed by Cabinet all receipts achieved from sites under the remit of the Directorate of Learning and Skills are to be held in the ring fenced Education Capital Receipts Reserve to support future capital improvement in schools.

Sustainability and Climate Change Implications

12. There are no sustainability and climate change implications arising directly from this matter. Any issues relating to the potential future development of the site will be matters for consideration separately.

Legal Implications (to Include Human Rights Implications)

13. There is a restrictive covenant on this land requiring that it is used for the purpose of agricultural, fields or public open space and other matters connected therewith and

for no other purpose. The restrictive covenant can be removed with the agreement from the vendors successor to allow the development of the site.

14. The Council has a statutory duty pursuant to S123 of the Local Government Act 1972 to secure the best consideration that can reasonably be expected to be obtained. Albeit that there are exceptions to the statutory duty, such exceptions are not being relied upon in the given case.

Crime and Disorder Implications

15. There are no Crime and Disorder implications arising from this matter.

Equal Opportunities Implications (to include Welsh Language issues)

16. There are no equal opportunities implications arising from this matter.

Corporate/Service Objectives

17. To achieve the optimum use of property assets.

Policy Framework and Budget

18. This is a matter for Executive decision.

Consultation (including Ward Member Consultation)

19. Ward members have been consulted. No adverse comments have been received to date.

Relevant Scrutiny Committee

20. Corporate Performance & Resources.

Background Papers

None

Contact Officer

Mark Haynes Project Manager, Consultancy

Officers Consulted

Paula Ham	Head of Strategy, Community Learning & Resources
Victoria Davidson	Operational Manager, Legal Services
Lorna Cross	Strategic Estates Manager
Anne Brown	School Organisation Manager
Victoria Robinson	Operational Manager for Development Management

Responsible Officer:

Jennifer Hill Director of Learning and Skills