

Report to the Cabinet

Report reference: C-017-2020/21
Date of meeting: 14 September
2020



Portfolio: Commercial and Regulatory Services – Cllr. A Patel
Subject: Release of Restrictive Covenants – Epping Forest College
Responsible Officer: Karim Pabani (01992 564123).
Democratic Services: Adrian Hendry (01992 564246).

Recommendations/Decisions Required:

Epping Forest College is granted a variation to the covenants on the land further to previous removal of restrictive covenants, in order to facilitate the Colleges plans for the site.

Executive Summary:

The Epping Forest College Site was subject to restrictive covenants in favour of Epping Forest District Council in relation to the use of the Property for Education. These were agreed to be released in 2019, but since this time, in order to facilitate further College plans, two variations to the covenants are required. The first involves transfer of land to the residential developer to facilitate housing development. The second involves transfer of development land from the residential developer back to the College and removal of the restriction that said land can only be used for residential purposes. This is to facilitate the Colleges proposed wellness centre.

Reasons for Proposed Decision:

Removal of the covenants benefits the District by allowing the College to develop the Wellness Centre while also assisting the developer in unlocking further housing provision in the District in accordance with the Local Plan.

Other Options for Action:

The restrictive covenants are not released. There is no governance, legal or commercial reason for EFDC to oppose the release of such covenants however and previous larger restrictions were agreed to be released in 2015 and 2019 by Cabinet.

Report:

1. Title number EX535442, being the Epping Forest College Site, was subject to restrictive covenants set out in a 1955 Conveyance and a 1952 Conveyance in favour of Epping Forest District Council in relation to the use of the Property for Education.

2. It was agreed with the Council last year that these covenants would be released and new covenants imposed over two parts of the Epping Forest College site, being the “Middle Site” and “Borders Lane Playing Fields”. These variations were agreed with the Council to enable the College to sell the parts of the property that were unused and also enable the Council to deliver the housing as part of the local plan.
3. The Middle Site is now subject to restrictive covenants for the use for residential purposes.
4. At the Borders Lane Playing Fields Site, the red land is to be used for residential purposes and blue land for community uses as the College will be delivering a wellness centre at this site.
5. Given the development of the site over the course of the last year, two further variations are now required to the covenants – Cabinet need to therefore confirm that the following two variations would be permitted.

Variation 1 – Green Land:

The land edged green on the attached plan ‘FNH436 Plan 1’ is currently subject to the education covenants. The land edged orange and blue forms the “Middle Site” where the covenants were varied last year. The College and housing developer have agreed to transfer the land edged green to the developer. As such, the covenants for this parcel of land would need to be varied to residential.

The College will retain a permanent right of way over the Green Land. The College have confirmed that this land is not used to access the site, nor is it used for emergency access. The developer would like to maintain this land.

It is proposed that a release and variation in the same form as entered into last year for the green land is entered into. Please refer to marked up Deed of Surrender.

Variation 2 - Wellness Centre Land

Following the development of the plans over the last year, the housing developer is going to transfer some land back to the College to enable the College to build a larger, full site wellness centre. The land which is being transferred back to the College is shown edged red on “FNH437...Plan 1 NCC Ownership”. This land is currently subject to a restriction not to use the property other than for residential purposes (as this was part of the land varied last year). The covenants on this land need to be re-varied to permit use for community uses as this is to form part of the wellness centre site.

Legal and Governance Implications:

There are three covenants that affects part of the Epping Forest College Site. These are briefly:

- Not to use the land other than for the purposes of the Education Act 1944 and/or the Nation Health Service,
- Not to erect any buildings on the land without first obtaining consent, and

- Not to sell the land without first offering the land back to the Council and a set timetable for purchase must be followed. The purchase price is to be determined by the District Valuer and calculated in the same way Compulsory Purchase claims are settled.

On previous applications to release covenants on the College Site, Essex County Council have provided that there is no requirement for land to be used for education in this area. In which case the College are able to argue that the need for the covenant is redundant. If the Council refused to release the covenants the owner of the land could therefore apply to the Upper Tribunal to release the covenants.

When considering an application to discharge or modify a restrictive covenant, the Upper Tribunal will take into account the development plan, any pattern for the grant or refusal of planning permission in the relevant area, as well as the time and context in which the covenants were imposed. The Tribunal has the power to order the applicant to pay compensation to the person entitled to the benefit of the covenant.

If the Upper Tribunal decides that a covenant is no longer required, then the amount of compensation would be the reduction in the purchase price due to the imposition of the covenants.

Counsel's opinion has previously been obtained on this issue. The advice was that if the Council refused to release the covenants, the Council would lose the case and any compensation awarded would be small. In addition, the Council would probably have costs awarded against it, (the requirement to pay the other sides legal costs), resulting in the Council paying more than it received in compensation.

Safer, Cleaner and Greener Implications: None.

Consultation Undertaken: None.

Background Papers:

1. 05/11/2015 Cabinet Decision
2. Draft Deed of Surrender
3. College Plan
4. Ownership Plan

Risk Management: N/A