



Executive
11 February 2013

Report from the Director of Regeneration and Major Projects

Wards affected:
Tokington

Vivian Avenue - Covenant Deed of Release

NOT FOR PUBLICATION

Appendix 2 is exempt from publication under Schedule 12A(3) of the Local Government Act 1972 as this includes Information relating to the financial or business affairs of Network Housing Group

1.0 Summary

- 1.1 Wembley District Council (the Council as successor in title) entered into a covenant with trustees of the Oakington Manor Estate not to develop open land at the rear of Vivian Avenue. Network Housing Group have secured a planning permission to develop the site for an extra care housing scheme for the frail elderly and have requested a deed of release from the covenant from the council. The benefits of new supported housing for the elderly, along with retention of part of the site for community allotments, are such that it is recommended that the council enter into such a deed.

2.0 Recommendations

That Executive;

- 2.1 Agree to release the restrictive covenant on the Vivian Avenue site at a cost to the Network Housing Group set out in Appendix 2, subject to Network Housing Group paying any legal fees, and the council ensuring through

agreement that the land shall only be used for affordable housing as set out in Appendix 2.

3.0 Background

- 3.1 In 1913 the Council (then as Wembley Urban District Council) entered into a deed with the owners and trustees of lands around Oakington Manor in Wembley. The owner and trustees covenanted with the council to lay out the lands of Oakington Manor as per agreed plans and also agreed to keep the land to the rear of 1-35 Vivian Avenue and the rear of 222-272 Harrow Road, 'unbuilt upon forever'.
- 3.2 This backland site was used for many years as a tennis club but has been abandoned for over twenty years and has become very overgrown; a club house remains standing on the eastern edge of the site. The council designated the site for housing use in its Site Specific Allocation's document (SSA25) providing that a majority of the site is kept in open use. The land is owned by Wembley Hill Sports and Social Club who have previously applied to develop the Vivian Avenue site on their own account over the past seven years. However, these proposals represented overdevelopment and failed to provide acceptable access to the site. Both planning applications were refused and appeals to the Planning Inspectorate dismissed.
- 3.3 Network Housing Group (NHG) exchanged contracts with the club for the purchase of the site and have secured planning permission (ref 12/2653) to develop the site for an Extra Care facility for the frail elderly, providing 40 self contained affordable rented flats in two blocks. The council will have 100% nomination rights to the scheme, ensuring Brent residents would benefit from the extra care accommodation, for which there is an increasing need in the borough and the provision of which forms part of the council's strategy to develop viable alternatives to residential care. The proposed development works well with NHG's adjacent sheltered housing scheme, Corsham House, and provides the vehicular access needed to develop this landlocked site through extension of the existing Corsham House access. The scheme also includes the provision of approximately 0.1 hectares of allotments which are proposed to be managed by a local residents association. Almost half the site is retained in open use (Appendix 1).
- 3.4 NHG's scheme is part of the 2011-15 affordable housing programme and a considerable amount of GLA housing grant and NHG balance sheet capacity will subsidise the scheme, as long as it can be completed by March 2015. This means that Network will need to get on site very soon and therefore need a speedy resolution to the covenant issue.

Release of Negative Covenants

- 3.5 The council would normally treat the release of a negative covenant like any other landowner and seek to exploit its commercial value. The council could choose to seek to maximise its commercial value, however it is recommended that the council do not seek a significant payment for release of the deed in

this particular case, some of the reasons for this recommendation are set out in Appendix 2.

- 3.6 There are clear financial benefits to the council of affordable care schemes in the borough. If the council uses a housing association as opposed to a private extra care provider savings in care costs can be made. The proposed scheme would generate savings of between £200k and £420k per annum to the council in care costs. Should the scheme come forward in time to achieve completion by March 2015, the completion would also qualify for a New Homes Bonus, representing a further £60k+ payment to the council. The proposed scheme also yields a S106 contribution of £63k for local PCT support, sustainable transport, open space and sports and environmental improvements within the local area of the site. Moreover, the scheme may release council houses and flats than can be re-occupied by those households in housing need. The risk of loss of this site for development of a highly deliverable affordable extra care scheme and known associated benefits should be considered in the balance against the exploitation of the deed of covenant for potential commercial value.

4.0 Legal Implications

- 4.1 The covenant was made on 7th April 1913 with Wembley District Council the Council's statutory predecessor in its capacity as local authority as part of an estate management scheme .It is not clear from the extract comprised in the Land Registry charges register for the property whether there are any other beneficiary of the covenant .
- 4.2 The Council should take into account its fiduciary duty when deciding whether to release a covenant or on what basis a covenant would be released .
- 4.3 Many historic covenants are capable of being challenged usually by means of an application to the Lands Tribunal under the Law of Property Act 1925 to have it released so NHG could seek to get the covenant set aside and the Tribunal would need to consider whether compensation was payable . However this is a relatively long and often expensive process. The time this would take however means that NHG could not in all probability complete their scheme and therefore secure grant.

5.0 Financial Implications

- 5.1 It is normal practice to seek financial compensation for the release of a negative covenant that otherwise constrains the value of a site.
- 5.2 Confidential appendix 2 of this report sets out the sum that NHG have offered to pay the Council to release the covenant.
- 5.3 The proposed scheme would generate savings of between £200k and £420k per annum (from approx. 2015-16) to the council in care costs. Should the scheme come forward in time to achieve completion by March 2015, the

completion would also trigger a New Homes Bonus payment to the council of approximately £60k. The proposed scheme also yields a S106 contribution of £63k.

- 5.4 NHG have agree to re-imburse the Council for any legal fees incurred in releasing the covenant. Any other costs associated with releasing the covenant will be me by the RMP department.

6.0 Diversity Implications

- 6.1 Any extra care scheme will be 100% wheelchair accessible.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 None

Background Papers

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Appendix 1 Scheme Layout



