

Report to Portfolio Holder for Resources and Reputation

Subject: Modification of Restrictive Covenant on Land and Sale of Access Road at Woodchurch Road, Bestwood

Date: 9 June 2021

Author: Property Surveyor

Wards Affected

Bestwood

Purpose

To seek approval to modify the restrictive covenant on the land coloured yellow in the plan at Appendix 1 (“the Land”) and to sell the freehold title of the access road shown coloured brown in the plan at Appendix 1 (“Access Road”).

Key Decision

This is not a Key Decision

Recommendation(s)

THAT:

- 1) Approval is given to modify the restrictive covenant on the Land as set out in this report**
- 2) Approval is given to sell the Access Road on the terms set out in this report**

1 Background

1.1 In 1987 the Council sold three plots of land at Woodchurch Road, Bestwood. The three plots are shown edged red, green and blue respectively on the plan at Appendix 1 (the Plots). The Council retained ownership, of the road which is used to access the Plots (the Access

Road). The Plot owners were granted rights over the Access Road subject to contributing a due proportion towards the maintenance of the same.

- 1.2 Each Plot was sold with a restrictive covenant which prevented no more than one private residential dwelling being built on it. The modification of such covenant would require the consent of all other Plot owners who had an interest in the same.
- 1.3 The owner of the red edged plot (64 Woodchurch Road) subsequently sold the part of the plot shown coloured yellow on the plan (the Land). The new owner of the Land (the Developer) is now seeking modification of the covenant affecting the Land, from the Council with regard to the development of 4 dwellings in accordance with planning application no 2018/0911, which was granted on 24th January 2019.
- 1.4 The other affected Plot owners have already released their interest in the covenant in respect of the Land and the Council is now being asked to do the same to regularise the build.
- 1.5 The Developer has offered to pay the Council a sum of £24,000 for the modification of the restrictive covenant in respect of the 4 dwellings that have been built on the Land. The Council's Valuer confirms that this is the best price achievable.
- 1.6 With regard to the Access Road which will also serve the 4 new dwellings in addition to the Plots. The Council does not own any land served by the Access Road and has no maintenance obligations in respect of the road. It is therefore proposed that the Council sell the Access Road for £24,000 to the Developer. The Council's Valuer confirms that this is the best price achievable.

2 Proposal

- 2.1 It is proposed that the Council agrees to modify the restrictive covenant on the Land for the sum of £24,000 and that approval is granted to sell the Access Road for the sum of £24,000, to the Developer.

3 Alternative Options

- 3.1 One alternative option is not to sell the Access Road and take responsibility for administering the maintenance contributions of the same. To date, no maintenance has been required to the Access Road. However due to age and the increased number of properties now using the Access Road, this could now become necessary. This would be difficult to calculate and would involve a significant amount of administration work for officers. In addition to this, as the Council have no

land served by the Access Road, there is no value to the Council in maintaining ownership.

- 3.2 Another alternative option is to not modify the restrictive covenant which would prevent development of the Land. The Developer could however apply to the Land Tribunal to modify the covenant under s84 Law of Property Act 1925.

4 Financial Implications

- 4.1 The Council would receive £24,000 for modifying the restrictive covenant on the Land.
- 4.2 The Council would also receive £24,000 for the sale of the Access Road.
- 4.3 The Developer will be making a contribution of £500 towards the Council's Legal Fees.

5 Legal Implications

- 5.1 The Council considers that the modification of the restrictive covenant on the Land is advisable in order to regularise the build of the 4 dwellings and to prevent a technical breach of covenant, the other affected Plot owners having already released their interest.
- 5.2 The modification of the covenant will not result in any loss to the Council.
- 5.3 The sale of the Access Road is advisable as all rights of way over the road will remain however the Council will not have the burden of ownership.
- 5.4 The Council has the power to dispose of land it owns in any manner it wishes, subject to the duty to obtain best value in accordance with Section 123 of the Local Government Act 1972. The Council's Valuer has certified that the compensation proposed for modification of the restrictive covenant affecting the Land and consideration for sale of the Access Road is the best that can reasonably be obtained and therefore the proposal accords with the Council's statutory duty.

6 Equalities Implications

- 6.1 There are no equalities implications arising from this report.

7 Carbon Reduction/Sustainability Implications

- 7.1 There are no carbon reduction/sustainability implications arising from this report.

8 Appendices

- 8.1 Appendix 1 - Plan

9 Background Papers

- 9.1 None identified.

10 Reasons for Recommendations

- 10.1 Modification of the restrictive covenant on the Land will provide the Council with a capital receipt of £24,000 and will help meet housing targets.
- 10.2 Selling the Access Road will provide the Council with a capital receipt of £24,000 and the Council will no longer be liable for the maintenance of the Access Road.

Statutory Officer approval

Approved by:

Date:

On behalf of the Chief Financial Officer

Approved by:

Date:

On behalf of the Monitoring Officer

