

<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>No</b>
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**PORTFOLIO HOLDER OR CORPORATE FINANCE AND GOVERNANCE  
9 MARCH 2020**

**A.1 INITIATION OF THE PROPERTY DEALING PROCEDURE IN RELATION TO THE REMOVAL OF RESTRICTIVE COVENANT AT 445 ST JOHNS ROAD, CLACTON ON SEA**

(Report prepared by Emma Norton)

**PART 1 – KEY INFORMATION**

**PURPOSE OF THE REPORT**

**To consider whether to initiate the property dealing procedure following a request from the existing owner to remove restrictive covenants in order to facilitate the construction of a new dwelling.**

**EXECUTIVE SUMMARY**

445 St Johns Road is a former Council property that was sold under right to buy legislation. The sale agreement included restrictive covenants including a requirement to use the property only as a single dwelling.

The Current owner of 445 St Johns Road has requested that the Council releases this covenant so as to facilitate the construction of a new two bedroom dwelling within the grounds of the existing property.

**RECOMMENDATION(S)**

**That Portfolio Holder initiates the property dealing procedure, whereby Officers consider the potential transaction in accordance with the Council’s Constitution, its statutory obligations and right to recover compensation for the release of restrictive covenants.**

**PART 2 – IMPLICATIONS OF THE DECISION**

**DELIVERING PRIORITIES**

This release of covenant in relation to these areas of garden has the potential to contribute to the Council’s priority to provide housing.

**FINANCE, OTHER RESOURCES AND RISK**

**Finance and other resources**

The potential release would generate a small capital sum for the Council.

**Risk**

Officers have not identified any risks associated with the potential transaction.

**LEGAL**

Section 32 of the Housing Act 1985 together with the General Housing Consent 2013 gives the Council discretionary power to dispose of land held under Part II of the Housing Act 1985 that has not been developed.

Section 123(1) Local Government Act 1972 indicates that, a local authority may dispose of

land held by it in any way it wishes so long as (section 123 (2)) the land is disposed for a consideration not less than the best that can reasonably be obtained.

Whilst a release of covenants may not be a "disposal of land" in the sense in which that term is most commonly understood, it constitutes a disposal of the Council's interest for present purposes. Before the release, the Council has an equitable interest in or right over land in that it has the right to enforce the covenant; after the release it does not, having in effect surrendered that right to the owner of the land burdened by the covenant in whose favour the release is made.

In coming to decisions in relation to management of assets, the Council must act in accordance with its statutory duties and responsibilities. Under case law following Section 120 of Local Government Act 1972, the Council is obliged to ensure that the management of its assets are for the benefit of the district.

In this case, the land was already been disposed of in 2004 but, subject to a restriction that the plot could only be used as a single dwelling and that the property may not be altered without the Council's consent.

The owner of this property has requested that the Council agrees to the removal of the covenant in order that he can develop an additional house on part of the plot. The benefit of the covenant is a real interest in property and the Council should seek the best consideration reasonably obtainable. The Council in releasing the covenant is entitled to recover compensation for doing so; the valuation will take both best consideration and an assessment of damages into account.

In coming to decisions in relation to management of assets, the Council must act in accordance with its statutory duties and responsibilities. Under case law following Section 120 of Local Government Act 1972, the Council is obliged to ensure that the management of its assets are for the benefit of the district.

In this case the land is held under Pt II of the Housing Act 1985. It includes no dwellings. Accordingly Secretary of State consent is not necessary. The land has already been disposed of. However, the benefit of the covenant is a real interest in property and the Council should seek the best consideration reasonably obtainable including the compensatory value for the release of the restrictive covenant.

#### **OTHER IMPLICATIONS**

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder/Equality and Diversity/Health Inequalities/Consultation/Public Engagement

#### **Ward**

Bluehouse Ward

### **PART 3 – SUPPORTING INFORMATION**

#### **BACKGROUND**

445 St Johns Road is a former Council dwelling that was sold under right to buy legislation in 2004. The sale agreement include restrictive covenants including a requirement to use each only as a single dwelling and not to carry out alterations without consent.

Planning permission for the proposed dwelling was granted on 22 August 2018 ref: 18/01053/FUL and amended by a further application ref: 18/01586/FUL

**CURRENT POSITION**

The Current owner of 445 St Johns Road has requested that the Council releases covenants so as to facilitate the construction of a new two bedroom dwelling within the plot of the existing property

Officers have carried out an initial assessment of the potential disposal. A copy is attached as appendix B.

**FURTHER HEADINGS RELEVANT TO THE REPORT**

None

**APPENDICES**

- Appendix A – Location Plan
- Appendix B – Assessment of Disposal Feasibility