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| Key Decision Required: | No | In the Forward Plan: | No |
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**PORTFOLIO HOLDER FOR CORPORATE FINANCE AND GOVERNANCE
6 OCTOBER 2020**

A.1 THE REMOVAL OF RESTRICTIVE COVENANTS AT 445 ST JOHNS ROAD, CLACTON ON SEA

(Report prepared by Emma Norton)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To consider, in principle, whether 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 the Right to Buy legislation. The sale agreement includes the following restrictive covenants:

That the property cannot be used for anything other than a private dwelling house or single residence without the consent of the Council; and

That the Council needs to give consent for any structural alterations or additions to the property.

The current owner of 445 St Johns Road has requested that the Council releases these covenants so as to facilitate the construction of a new two bedroom end of terrace house built up against the existing house.

The Portfolio Holder’s decision to initiate the Property Dealing Process was published on 6 April 2020 and effective from 16 April 2020 and terms for the release have now been agreed, subject to contract and Member decision. The terms of the release are considered in a concurrent confidential report.

RECOMMENDATION(S)

That the Portfolio Holder determines, in principle, to release the restrictive covenants.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

This release of the covenants in relation to this garden area 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 is for the benefit of the district.

The freehold interest in the property was disposed of in 2004, but this is 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 current owner of 445 St Johns Road has requested that the Council agrees to the removal of the covenant in order that an additional two bedroom property end of terrace property can be built up against the existing house. 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 and the agreed terms reflect both best consideration and damages into account.

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

None

Ward

Bluehouse Ward

PART 3 – SUPPORTING INFORMATION

BACKGROUND

445 St Johns Road is a former Council property that was sold under the Right to Buy

legislation in 2004. The conveyance includes restrictive covenants including a requirement to use the property only as a single dwelling and not to carry out alterations without consent.

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 two bedroom end of terrace house built up against the existing house.

Planning permission for the proposed dwelling was granted on 22 August 2018 ref: 18/01053/FUL

Officers and the owner have provisionally agreed terms for the release of covenant. The terms are outlined in a concurrent confidential report.

FURTHER HEADINGS RELEVANT TO THE REPORT

None

APPENDICES

None