

<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>No</b>
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**PORTFOLIO HOLDER FOR CORPORATE FINANCE AND GOVERNANCE  
24 AUGUST 2022**

**A.1 THE REMOVAL OF RESTRICTIVE COVENANTS AT 151 WIVENHOE ROAD, ALRESFORD**

(Report prepared by Customer and Support Manager)

**PART 1 – KEY INFORMATION**

**PURPOSE OF THE REPORT**

**To consider, in principle, whether to remove restrictive covenants in order to facilitate the construction of two small bungalows, subject to planning permission being obtained.**

**EXECUTIVE SUMMARY**

151 Wivenhoe Road is a former Council property that was sold under right to buy legislation in 1983.

In 2018, the Council subsequently sold an area of land to the rear of its property at 149 Wivenhoe Road, Alresford to the owners of 151 Wivenhoe Road.

The transfer documents for these transactions include restrictive covenants that specify:

For 151 Wivenhoe Road

The property shall not be used except as a private dwelling house or single residence without the vendor's consent; and

Not to make any structural alterations in or addition to the said property without the Council's consent.

For the land adjacent to 151 Wivenhoe Road

Not to use the property for any purpose other than as garden land in connection with one single private residence.

The agent acting on behalf of and with the consent of the current owner of 151 Wivenhoe Road has requested that the Council releases these covenants so as to facilitate the construction of two small bungalows.

The Portfolio Holder's decision to initiate the Property Dealing Procedure was published on 5 April 2022, with effect from 13 April 2022, and terms for the release have now been agreed, subject to planning permission being obtained, 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 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.

In this case, the areas of land had already been disposed of in 1983 and 2018 but, subject to restrictions that the plot purchased with the property could only be used as a single dwelling and that the property may not be altered without the Council's consent. The land subsequently sold in 2018 was only to be used for garden purposes.

The owner of this property has requested that the Council agrees to the release of these covenants in order that the site potential can be realised and properties developed on the site, subject to planning approval and conditions.

The benefit of these covenants is a real interest in property and the Council should seek the best consideration reasonably obtainable. The Council, in releasing the covenants, is entitled to recover compensation for doing so and the valuation will take both best consideration and an assessment of 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**

Alresford and Elmstead

**PART 3 – SUPPORTING INFORMATION****BACKGROUND**

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The transfer documents for these transactions include restrictive covenants that specify:

For 151 Wivenhoe Road

The property shall not be used except as a private dwelling house or single residence without the vendor's consent; and

Not to make any structural alterations in or addition to the said property without the Council's consent.

For the land adjacent to 151 Wivenhoe Road

Not to use the property for any purpose other than as garden land in connection with one single private residence.

**CURRENT POSITION**

The agent acting on behalf of and with the consent of the current owners of 151 Wivenhoe Road, Alresford has requested that the Council releases these covenants so as to enable the construction of two bungalows, subject to planning approval and conditions on land conveyed to the owners of 151 Wivenhoe Road.

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