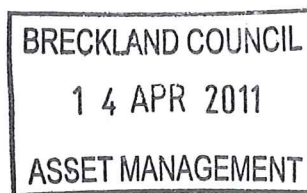


Your ref:
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Date: 13 April 2011



Ms Z Footer
Breckland District Council
DX 45058
DEREHAM

Do not put any text in this area



Dear Mrs Footer

Sweyn Close, Thetford

Thank you for your letter of 29 March.

I will endeavour to answer your questions as follows :-

1. Why does Flagship Housing Group need these covenants released?

The answer really is two fold. First Flagship Housing Group are developing a substantial area of land. A large part of this land comprises stock transfer land on which no specific covenants were imposed by Breckland District Council other than the standard stock transfer covenant not to develop the land except within its existing uses. Peddars Way have also bought back a number of properties previously sold off by the Council under the Right to Buy provisions of the Housing Acts where the Council imposed its standard Right to Buy covenants. We therefore end up with a development site which is generally free from particular covenants but pepper-potted with areas of land subject to the Breckland Council's Right to Buy covenants. If it was not necessary to impose on Peddars Way Housing Association Limited at stock transfer the same detailed covenants that were imposed on the Right to Buy transfers, where is the logic or consistency of insisting on those covenants remaining when Flagship Housing Group is now developing out the entire site? It just messes up all the titles to have covenants on parts of the site where on a similar house next door there may be no such covenants.

The other reason for requesting the release of the covenants is that many of them are no longer necessary or appropriate in view of the proposed redevelopment and some may actually be breached and therefore impede, frustrate or prevent the redevelopment. The covenants may vary very slightly from individual to individual Right to Buy Conveyance or Transfer but I have enclosed by way of example a copy of the Conveyance dated 2

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Consultant: Robert Plumbly

February 1987 from the Council in respect of 14 Sweyn Close and I will address each of the covenants set out in the Third Schedule :-

- (1) This is a covenant not to use or occupy what was originally the site of 14 Sweyn Close except as a [meaning a single] private dwelling house and not to carry on any trade, manufacture or business. The site of what was originally 14 Sweyn Close under the redevelopment is not necessarily going to be a single private dwelling house when that site is redeveloped because the boundaries of the new dwellings will not necessarily coincide with the boundaries of all the original old dwellings. If parts of 2 or more of the redeveloped houses are built on the site of the original No. 14 Sweyn Close then this covenant is breached.
- (2) This is a covenant to maintain and repair all existing boundaries as originally constructed by the Council in respect of No. 14 Sweyn Close and not to erect any others without the Council's previous consent. It is extremely unlikely that the boundary structures of the redeveloped site are going to be in precisely the same position or of precisely the same materials as the originals for No. 14 Sweyn Close.
- (3) This is a covenant not to erect any additional buildings or make any additions or alterations except in conformity with planning legislation. Does the Council consider this covenant necessary when it knows that Flagship Housing Group has obtained planning permission. There is of course also in place a Section 106 Agreement requiring Flagship Housing Group to observe the terms of any planning consents.
- (4) This is a covenant to maintain services and any land shown coloured blue on the transfer plan (which, where it applies, is generally an unadopted road or footpath) and used in common with adjoining or neighbouring properties. Bearing in mind that Flagship Housing Group own all the adjoining and neighbouring properties this covenant would no longer seem to be relevant from the Council's point of view and further any areas shown blue on the Transfer plan as private accessways or roadways may no longer be such as part of the redeveloped site.
- (5) This is a covenant not to lay any structures within an unspecified proximity of service media or plant trees within 20 feet of such services. Bearing in mind all the services etc. that are likely to be affected by any such covenant are under land already owned by Flagship Housing Group this covenant is unlikely to be of any practical benefit to the Council.
- (6) This is a general covenant prohibiting nuisance or annoyance. While the Council may consider this still has some merit, it will be pot luck from the Council's point of view as to whether the source of any nuisance or annoyance from any particular property on the redeveloped estate is subject to this covenant bearing in mind there is no similar covenant in the stock transfer property comprised in the redeveloped site. It might even be that the covenant only applies to part of a new house built on the redeveloped site because the footprint of the new house will probably not coincide with the boundaries of the original property the subject of the covenant.
- (7) This is a covenant prohibiting signs and notices. We make the same comment as under (6) above.

- (8) This is a covenant not to keep animals or birds except domestic ones. Again a similar comment applies.
- (9) This is a covenant not to obstruct the land coloured blue on any Transfer plan or park vehicles except within the garage or carport forming part of the property. As all the properties are being redeveloped not only may the land originally coloured blue no longer be within its original proposed use but garages and carports of the original properties are almost certainly not going to be in their original positions so this covenant becomes unworkable and obsolete.
- (10) This is a covenant prohibiting sheds, caravans, boats and alterations to entrances and exits. The same comment as under (6) above applies with regard to sheds, caravans and boats. Entrances and exits are obviously going to be changed and relocated so the covenant will be breached.
- (11) This is a general covenant to maintain and cultivate gardens. Not only does the comment under (6) apply but what were gardens of the original properties may no longer be gardens under the new development layout.
- (12) This covenant relates to communal TV aerials (if any). There is none proposed for the redeveloped site.

In conclusion it would seem appropriate to release the covenants in their entirety rather than try and vary them as specifically required in each case. The latter course would require a separate deed of variation for each property, and separate variations in respect of each property in the light of an overlay of the existing properties against the revised development layout to determine the precise extent of the variation of each separate covenant in relation to each separate property.

2. Why is it appropriate that the covenants should be released?

I have set out reasons under 1. above.

3. Why is it appropriate the covenants should be released with no premium?

The reason is that the covenants are of no practical benefit to the Council. We understand the Council is keen to see the redevelopment at Sweyn Close and Fulmerston Road proceed. A refusal to release the covenants or require a premium will only frustrate or make more expensive the proposed redevelopment of the site which would appear to be contrary to the objectives of both Flagship and the Council.

4. How does a release by the Council prevent another person with the benefit of the covenants from enforcing them?

Our response is that as a matter of law it obviously does not but a number of the covenants require the consent or approval of the Council and therefore only the Council can give that consent or approval and not any successors.

Clause 3(2) of the Council's standard Right to Buy transfer contains a declaration that each purchaser shall not be entitled to the benefit of covenants imposed by the Council on any owner or lessee of adjoining or neighbouring property. Any adjoining property that does claim to have the benefit of the covenants would first need to prove that their property is

sufficiently proximate to and capable of benefiting from the covenants. Most, if not all, the property sold off by the Council within the vicinity which might be capable of proving this is going to be residential property and if the standard form of Right to Buy Conveyance or Transfer was used then the exclusion at clause 3(2) of the standard form of Right to Buy transfer would actually prevent them from having the benefit of the covenants anyway.

Finally our clients would only require the Council to release the covenants insofar as it has power to do so. It then becomes a matter for our clients to consider whether it wishes to insure against any residual liability that may exist as a result of third parties being entitled to enforce those covenants.

I hope this may assist and look forward to hearing from you.

Yours sincerely


Kevin Oelrichs

