

BRECKLAND DISTRICT COUNCIL

Report of Mark Kiddle-Morris, Executive Member for Assets and Strategic Development

To: CABINET 26 JULY 2011

(Author: Zoe Footer – Land Management Officer)

**Subject: Barnham Cross Estate
Redevelopment at Sweyn Close/Fulmerston Road, Thetford
Release of Restrictive Covenants**

Purpose: Flagship Peddars Way has asked Breckland Council for the release of restrictive covenants that it placed on 17 properties when Breckland Council originally sold the land. This is necessary to deliver 67 affordable dwellings of which 33 will be additional to the re-provision of 34 cross-walled properties. The report offers options available to react to this request.

Recommendation(s):

It is recommended that Cabinet consider the options contained at paragraph 1.3 of the report and decide upon a way forward.

1. INTRODUCTION

1.1 Background

1.1.1 Flagship Peddars Way have been working in partnership with Breckland Council since early 2008 to bring forward the redevelopment of 34 cross-walled properties at Sweyn Close on the Barnham Cross Estate in Thetford. Sweyn Close will deliver 67 affordable dwellings of which 33 will be additional to the re-provision of 34 cross-walled properties. The scheme has HCA funding. The development of Sweyn Close forms part of the regeneration of the Barnham Cross Estate.

1.1.2 To facilitate this proposed development Flagship Peddars Way has acquired 17 properties at Sweyn Close/Fulmerston Road.

1.2 Issues

1.2.1 Breckland Council owned these 17 properties before they were sold under the Right to Buy legislation and as Members would expect, a number of restrictive covenants were put in place to protect the Council, i.e. not to use or occupy the Property or suffer or permit the same to be used or occupied for any purpose other than as a private dwellinghouse in the occupation of one family... The properties affected include the following:

- i. 54 Fulmerston Road;
- ii. 56 Fulmerston Road;
- iii. 58 Fulmerston Road;
- iv. 66 Fulmerston Road;
- v. 76 Fulmerston Road;

- vi. 82 Fulmerston Road;
- vii. 90 Fulmerston Road;
- viii. 94 Fulmerston Road;
- ix. 102 Fulmerston Road;
- x. 6 Sweyn Close;
- xi. 7 Sweyn Close;
- xii. 8 Sweyn Close;
- xiii. 9 Sweyn Close;
- xiv. 10 Sweyn Close;
- xv. 12 Sweyn Close;
- xvi. 13 Sweyn Close; and
- xvii. 14 Sweyn Close.

1.2.2 Greenland Houchen Pomeroy Solicitors, who act for Flagship Peddars Way in respect of this matter, wish the Council to consider giving Flagship Peddars Way clean title on the 17 properties they have recently acquired for their redevelopment. They have indicated that the proposed development is unlikely unless all of the restrictive covenant's Breckland Council placed on these 17 properties are released. We have raised with Greenland Houchen Pomeroy Solicitors that not only is the consent of Breckland Council required the consent of third parties to the release of the restrictive covenants may also be required. However, this is a matter for the solicitors acting for Flagship Peddars Way to investigate.

1.2.3 A letter received from Greenland Houchen Pomeroy Solicitors dated 13 April 2011 is attached which sets out the full background and the reasons as to why they wish Breckland Council to consider the release of these restrictive covenants.

1.2.4 The Council's District Valuer has carefully considered the value of the restrictive covenants in favour of Breckland Council and in his opinion Flagship Peddars Way should pay in total, the order of £100,000 (one hundred thousand pounds).

1.3 Options

1.3.1 Agree to release each and every restrictive covenant (insofar as the Council has power to do so) contained in the relevant Conveyances in respect of the properties identified in 1.2.1 above, at nil consideration, as per the request from Flagship Peddars Way. Please refer to paragraph 3 of the letter attached, as to the reasoning the Housing Association feels the covenants should be released at no premium.

1.3.2 Agree to release each and every restrictive covenant (insofar as the Council has power to do so) contained in the relevant Conveyances in respect of the properties identified in 1.2.1 above but negotiate with the Housing Association as to an appropriate market value and/or a claw back arrangement.

1.3.3 Refuse to release the restrictive covenants.

1.4 Reasons for recommendations

1.4.1 To deliver 67 affordable dwellings of which 33 will be additional to the re-provision of 34 cross-walled properties.

1.4.2 The development at Sweyn Close forms part of the regeneration of the Barnham Cross Estate.

2. IMPLICATIONS

2.1 Risk

2.1.1 I have completed the Risk Management questionnaire and can confirm that risk has been given careful consideration, and that there are no significant risks identified associated with the information this report.

2.2 Financial

2.2.1 Proforma B attached.

2.3 Legal

2.3.1 Breckland has identified that disposal at nil consideration to Flagship Peddars Way and the development of the site has added value and will provide the Council with additional benefits for the community.

2.3.2 Part 6 of the Annex to the Local Government Act 1972 may apply. Under Section 123 (2), General Disposal Consent (England) 2003 the land can be disposed of for "the promotion or improvement of social well being"....."providing the consideration for the disposal does not exceed two million pounds".

2.4 Equality and Diversity

2.4.1 Implicit within process.

3. Alignment to Council Priorities

3.1 Prosperous Communities – secure a decent standard of housing across the district.

4. Wards/Communities Affected

4.1 Saxon.

Lead Contact Officer

Name/Post: Zoe Footer, Land Management Officer

Telephone Number: (01362) 656378

Email: zoe.footer@breckland.gov.uk

Key Decision

This is not a key decision.

Appendices attached to this report:

Letter from Greenland Houchen Pomeroy Solicitors dated 13 April 2011.

Proforma B.