REPORT OF THE EXECUTIVE MEMBER FOR COMMERCIAL AND COMMUNITY
(Author: Zoe Footer, Land Management Officer, in conjunction with Ray Johnson, Operations Manager for Commercial and Community)

RESTRICTIVE COVENANTS – RIGHT TO BUY PROPERTIES

This report requests the formalisation of the current procedure with regard to the restrictive covenant contained within conveyances of ‘Right to Buy’ properties requiring the purchaser not to ‘use or occupy the Property, or suffer or permit the same to be used for any other purpose other than as a private dwelling in the occupation of one family…’ and asks Cabinet to recommend to Council to vary the scheme of delegation to give power to the Operations Manager for Commercial and Community to approve such requests.

1. INTRODUCTION/BACKGROUND

1.1 It is ordinary for occupiers/purchasers of former council houses sold under the ‘right to buy’ provisions to now obtain planning permission for another dwelling on part of the land.

1.2 It was practice was selling council houses under the ‘right to buy’ provisions, to impose a restrictive covenant in the sale requiring that the purchaser did not ‘use or occupy the Property, or suffer or permit the same to be used for any other purpose other than as a private dwelling in the occupation of one family…’.

1.3 The Council has an approved process when in receipt of a request for the formal release of restrictive covenants (see attached). In accordance with the Council’s constitution, such requests are delegated to Executive Members.

2. KEY DECISION

2.1 This is not a key decision.

3. COUNCIL PRIORITIES

3.1 This matter raised in this report falls(s) within the following council priorities:

   • A well planned place to live which encourages vibrant communities; and
   • A prosperous place to live and work.

4. RESTRICTIVE COVENANTS – RIGHT TO BUY PROPERTIES

4.1 A decision in a House of Lords Case in 2000 (R.V. Braintree D.C. ex parte alls) held that a Council is not entitled to use a restrictive covenant to reserve for itself the ‘future development value’ of a property sold under the ‘right to buy’ scheme.

4.2 Counsel’s advice was obtained on its implications and is as follows:

   a. it would be improper and unlawful for the Council to continue to demand payment for the release of the covenant; such payments should not be demanded in respect
of any future requests for release, or in relation to any ongoing negotiations for release, which are not yet complete.

b. continuing to demand payment in the knowledge that the demand is ultra vires, might amount to obtaining property by deception within the meaning of Section 15 of the Theft Act 1968. Section 18 of the Theft Act extends the liability in relation to a body corporate to certain officers and members.

c. the Council should therefore release purchasers from the covenant when requested to do so without payment.

d. it may be that sums paid both before and since the decision in ‘Halls’ are potentially recoverable as payments made under a mistake in law, but much will depend on the facts of each individual case.

4.3 To ensure that requests for the release of the restrictive covenant requiring that the purchaser does not ‘use or occupy the Property, or suffer or permit the same to be used for any purpose other than as a private dwelling house in the occupation of one family…’ (if the property was purchased under the ‘right to buy’ provisions) are processed quickly and efficiently, it is felt that the Operations Manager for Commercial and Community be given authority to approve such requests, subject to officer and ward representative(s) consultation and providing the occupier/purchaser has obtained the necessary planning consent. The Council to recover legal costs associated with the approval of such matters.

4.4 All other requests received by the Council for the release of restrictive covenants to be managed in accordance with the approved process receiving the best possible value.

5. OPTIONS

5.1 That Cabinet recommends to Full Council to vary the scheme of delegation and give power to the Operations Manager for Commercial and Community to approve requests for the release of the restrictive covenant requiring that the purchaser does not ‘use or occupy the Property, or suffer or permit the same to be used for any purpose other than as a private dwelling house in the occupation of one family…’ (if the property was purchased under the ‘right to buy’ provisions) subject to officer and ward representative(s) consultation being carried out and providing the occupier/purchaser has obtained the necessary planning consent. The Council to recover legal costs associated with the approval of such matters.

5.2 That the scheme of delegation not be varied.

6. REASONS FOR RECOMMENDATION

6.1 To formalise the current procedure with regard to the release of restrictive covenants.

6.2 To ensure such requests are processed quickly and efficiently.

7. RECOMMENDATION

7.1 That Cabinet recommends to Full Council to vary the scheme of delegation and give power to the Operations Manager for Commercial and Community to approve requests for the release of the restrictive covenant requiring that the purchaser does not ‘use or occupy the Property, or suffer or permit the same to be used for any purpose other than as a private dwelling house in the occupation of one family…’ (if the property was purchased under the ‘right to buy’ provisions) subject to officer and ward representative(s) consultation being carried out and providing the occupier/purchaser has obtained the necessary planning consent.

The Council to recover legal costs with the approval of such matters.
Appendix A – approved process for release of restrictive covenants.

*This report has taken account of the need for compliance with the Council’s Equal Opportunities Policy and the requirements of Section 17 of the Crime and Disorder Act 1998 and the Human Rights Act 1998. This report raises no matters to which attention specifically needs to be drawn under the legislation.*