

BRECKLAND DISTRICT COUNCIL

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

To: Cabinet: 13 January 2015

(Author: Kirsty Mallett, Land Management Officer)

Subject: Land at Paper Street, Yaxham

Purpose: To consider how to regularise a breach of restrictive covenant that has arisen on land transferred from Breckland Council to Yaxham Parish Council

Recommendation(s):

That Breckland District Council enter into a Deed of Variation with Yaxham Parish Council to:-

- 1) Remove the Restrictive Covenant imposed restricting use of this land as 'Allotment use only' in the Transfer dated 24th October 2011
- 2) Impose a further Restrictive Covenant to restrict this land as allotment or agricultural use.
- 3) Impose a further Restrictive Covenant not to sell the land without first obtaining authorisation from Breckland District Council
- 4) Do so at nil consideration

1.0 BACKGROUND

- 1.1 In October 2011 Breckland Council transferred a parcel of land at Paper Street, Yaxham Parish Council at nil cost. The land was encumbered by an agricultural tenant and a restrictive covenant which allowed the land to be used for the purposes of allotments only.
- 1.2 The Parish Council were aware of the existence of the tenant, who it emerged had a tenancy under the provisions of the Agricultural Holdings Act, and sought preliminary legal advice on ending the tenancy. They were advised to seek Counsel's opinion which would have cost in excess of £1,000 before serving a notice to quit (which would have attracted further fees of circa £400).
- 1.3 The Parish Council approached Breckland Council in 2013 as they were aware that they were in breach of the covenant allowing the land to be used for the purposes of allotments and requested that the Council consider releasing the covenant.
- 1.4 It was considered by Breckland Council that as the land had an agricultural value in the region of ten to fifteen thousand pounds that the Parish Council should be charged for the release of the covenant or the land should be transferred back to the Council at nil cost.
- 1.5 A value was sought from the District Valuer to remove the restrictive covenant so that the current use (agricultural) could continue. In 2013 the District Valuer believed that the current market value of the restrictive covenant was worth £3,000.
- 1.6 The Parish Council were made aware of the District Valuer's findings and decided to proceed with the removal of the restrictive covenant.

1.7 The position of the Parish Council has now moved on. The Parish Clerk has advised the Council that they are no longer in a position to pay the fee of £3,000 for the removal of the covenant, given that they only receive £150 per annum in rent from the tenant. They have asked the Council to consider removing the existing restrictive covenant and adding a further restrictive covenant which would allow the land to be used for either agricultural or allotment purposes, in the event that they are at some time in the future able to end the agricultural tenancy and to consider waiving the fee.

2.0 **OPTIONS**

2.1 To release the restrictive covenant allowing the land to be used for allotment purposes only and replace it with one which would allow the land to be used for the purposes of either agriculture or allotments waiving any fee subject to the Parish Council agreeing to pay Breckland Council's legal fees and adding a further restrictive covenant to prevent the Parish Council from selling the land without first obtaining the authority of Breckland District Council.

2.1 To release the restrictive covenant and replace it with a covenant allowing it to be used for agricultural purposes only subject to the payment of £3,000.

2.2 To ask the Parish Council to transfer the land back to the District Council at nil cost given that it is in breach of the existing restrictive covenant.

2.3 Do nothing.

3.0 **REASONS FOR RECOMMENDATION(S)**

3.1 To release the existing restrictive covenant and replace it with a further covenant will allow the Parish Council to retain the land and to take further advice on how to remove the tenant to allow the land to be used in the future for allotments for the local residents. A further covenant could be imposed to protect the Councils financial interests, in the event that the Parish Council did decide at any time to sell the land, which would prevent the Parish Council from disposing of the land without the Council's consent.

3.2 The Parish Council are not in a position to give the Council £3,000 to release the restrictive covenant, as a consequence of which the Parish Council are in breach of the restrictive covenant.

3.3 If the land were to be transferred back to Breckland Council at nil cost the Parish Council would no longer be in breach of the restrictive covenant and the Council would have control over the land. Breckland District Council would then need to consider whether to seek Counsel's opinion in relation to the Agricultural Tenancy.

3.4 The Council could choose if it so wished not to do anything and to allow the situation to remain as is in the interim, to allow the Parish Council to explore in further detail the options available to them to end the agricultural tenancy.

4.0 **EXPECTED BENEFITS**

4.1 To release the restrictive covenant and impose a further amended restrictive covenant at nil cost will allow the Parish Council to secure a small rent which is used for the benefit of the residents, whilst at the same time give some comfort to the Parish Council as they will no longer be in breach of the restrictive covenant and subject to possible legal action.

The Parish Council can then continue exploring options to end the agricultural tenancy which will then allow the land to be used as allotments for the benefit of the residents. The inclusion of a new covenant preventing the land from being disposed of without the Council's consent will protect the Council's financial interest in the land.

4.2 There are no expected benefits from pursuing this option.

4.3 If the land were transferred back to Breckland Council it would incur an additional liability.

4.4 This option would be the most cost effective for both parties as neither would incur any legal fees but it would not regularise the situation.

5.0 **IMPLICATIONS**

5.1 **Carbon Footprint / Environmental Issues**

5.1.1 It is the opinion of the Report Author that there are no implications

5.2 **Constitution & Legal**

5.2.1 If approved instructions will be sent to our solicitors to draft the Transfer document.

5.3 **Contracts**

5.3.1 It is the opinion of the Report Author that there are no implications.

5.4 **Corporate Priorities**

5.4.1 Developing Stronger Communities.

5.5 **Crime and Disorder**

5.5.1 It is the opinion of the Report Author that there are no implications.

5.6 **Equality and Diversity / Human Rights**

5.6.1 It is the opinion of the Report Author that there are no implications.

5.7 **Financial**

5.7.1 Pro-forma B is attached.

5.8 **Risk Management**

5.8.1 It is the opinion of the Report Author that there are no implications.

5.9 **Staffing**

5.9.1 It is the opinion of the Report Author that there are no implications.

5.10 **Stakeholders / Consultation / Timescales**

5.10.1 Consultation with the Ward Representatives.

5.11 **Other**

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 Upper Yare

7.0 **ACRONYMS**

7.1 None.

Background papers:-

Lead Contact Officer

Name and Post: Kirsty Mallett, Land Management Officer

Telephone Number: 01362 656293

Email:kirsty.mallett@breckland.gov.uk

Director / Officer who will be attending the Meeting – Kirsty Mallett, Land Management Officer

Key Decision: ~~Yes~~ / No

Exempt Decision: ~~Yes~~/ No

Appendices attached to this report:

Appendix A – Location Plan

Pro-Forma B.