

Decision maker: Cabinet

Subject: Land at Fort Cumberland Southsea Portsmouth

Date of decision: 7th June 2010

Report by: Head of Legal Licensing & Registrars

Wards affected: Eastney & Craneswater

Key decision: No

Budget & policy framework decision: No

1. Summary

The report seeks approval to the recommendation contained in the exempt appendix to this report to conclude a grant and deed of release of restrictive covenants between the Qinetiq and Portsmouth City Council.

2. Purpose of report

This report and its exempt appendix provide background information outlining the position the Council finds itself in and the options open to it.

3. Background

- 3.1 The Council has been in negotiation with Qinetiq regarding the terms of a deed of grant and release of covenants since 2007. The deed permits the developer to widen the access road to its site on the grant of planning permission. There have been 8 previous cabinet meetings and extensive negotiation regarding the content of the deed and two adjourned applications by the developer for leave to issue a claim for judicial review.
- 3.2 All that now remains to be agreed is specific wording relating to beach access which the developer says needs to be amended for operational purposes relating to use of its site. Further information regarding the specific wording is contained in the exempt appendix.
- 3.3 Upon signing of the deed the City Council will receive release of the restrictive covenants and temporary beach access until a full planning permission is granted. After planning permission is granted Portsmouth receive the consideration of £75,000.
- 3.4 When the site is developed the City Council will receive permanent beach access.
- 3.5 The Developer has the benefit of 3 restrictive covenants placed on the Council's land by its predecessor the Ministry of Defence when it sold the land to the Council in 1979. Although the deed contains a release and waiver from the covenants the developer requires the Council to comply with 3 restrictive covenants. These are:

- (a) The restriction on the number of units on the caravan site.
- (b) Closing the Fort Cumberland Road Car Park to return it to open space and
- (c) Re-opening the right of way the developer has over Melville Road.

- 3.6 In relation to (a) the Council believes there is no breach of this covenant. In relation to (b) the Council will be required to close the car park which will incur an expense to comply and a loss of parking provision. Compliance with covenant (c) will require a revocation of an existing traffic order and removal of physical restrictions put in place to close the road. The costs associated with the reopening of Melville Road have not been completed, but members are advised that it would be in the region of £50,000.
- 3.7 Whilst the deed remains unsigned the Developer has preventing access to Fraser beach which forms part of its title to the development site.
- 3.8 The claim for judicial review was adjourned on 27th January 2010 for 28 days to allow further negotiations to take place. A new hearing date has not yet been given by the High Court.

4. Recommendations

- 4.1 That the cabinet endorse and accept the recommendation as set out in the attached exempt appendix.
- 4.2 That the Head of Legal, Licensing and Registrar's be authorised to complete the deed of variation containing the amended wording as set out in the exempt appendix.

5. Reasons for recommendations

The full reasons for supporting the recommendation are contained in the exempt appendix.

6. Options considered and rejected

There are no other reasonable options in light of the obligations on the Council to enter into the deed when balanced with the detriments and benefits outlined in the background section of this report.

7. Duty to involve

The land is in the ownership of a private developer, there is no duty to involve.

8. Implications

- 8.1 If the recommendation is approved the requirement to comply with the covenants will be lifted because the deed contains a release and waiver of the restrictive covenants and temporary beach access will be granted.

8.2 The best that can be achieved is to defer the exercise of the restriction to limit beach access to provide those affected by the limitation with certainty regarding their future. This would provide the opportunity for those affected with the opportunity to seek a solution with the Council and other land owners with appropriate sites.

9. Corporate priorities

This report and the project it refers to contribute to the following Corporate Priorities:

- Increase availability and quality of housing.
- Regeneration of the city.

10. Equality impact assessment (EIA)

An equality impact assessment is not required, negotiation and completion of the deed does not amount to a policy decision of the local authority.

11. Legal implications

It is within the Council's power to:

- Accept the release of the restrictive covenants.
- Receive £75,000 upon the grant of planning permission.

With regard to the merits of the current proposal, legal advice has been provided in the exempt appendix.

12. Head of Finance's comments

The financial position is as follows:

If the Deed of release and grant of easement is completed this secures a capital receipt to the council of £75,000. Asset Management Service has previously advised the Executive that the capital receipt of £75,000 is an appropriate sum for QinetiQ to pay for the variation of the right of way. This sum is included in the forecast capital receipts schedule for 2010/11 and has therefore already been taken into account in determining future capital financing resources.

External legal costs to date associated with the expert Counsel advice obtained on this case now total £50,700. These costs have been charged to the Property Portfolio budget head within the Planning Regeneration and Economic Development (PRED) portfolio over the past three years.

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Signed by:

Appendices: 1**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
1	
2	

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by [title of decision maker] on [insert date of meeting].

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Signed by: [title of decision maker]