
REPORT TO:	HOUSING AND COMMUNITY SERVICES COMMITTEE	AGENDA ITEM: 7
DATE OF MEETING:	11th January 2007	CATEGORY: DELEGATED
REPORT FROM:	DIRECTOR OF COMMUNITY SERVICES	OPEN:
MEMBERS' CONTACT POINT:	Mark Alflat x 5892	DOC:
SUBJECT: WARD(S) AFFECTED:	Former site of 22-28 Askew Grove Repton	REF: TERMS OF REFERENCE: HCS01

1.0 Purpose of Report

- 1.1 To enable Committee to decide whether to grant a request for the relaxation of the restrictive covenants on the site of 22-28 Askew Grove Repton to allow the construction of 11 properties on the site. This report was deferred at the October 12th 2006 and 23rd November 2006 meetings of the Committee to allow additional legal opinion to be sought.

2.0 Background

- 2.1 Between February 1988 and August 2000 the Council sold the 4 council houses at 22 – 28 Askew Grove, Repton under the Right to Buy procedure to the respective sitting tenants.
- 2.2 A standard covenant was contained within the deeds of each sale; “not to use the said property or any part thereof (which shall be deemed to include at all times all and singular the buildings whether of a temporary or permanent nature within the curtilage of the said property) for any purpose except that of a private dwelling house or private motor garage belonging thereto”.
- 2.3 The covenant was and still is imposed with the intention of preserving the general amenity of the Council’s remaining properties in the vicinity.
- 2.4 The 4 properties were subsequently acquired by developers who obtained planning permission in late 2005 to demolish them and build 6 detached houses on the site. The developer applied to the Council for a relaxation of the covenant and this was granted under delegated powers by officers. It was assessed that given that the proposal already had planning permission and that the land could readily accommodate 6 dwellings that there was no reasonable ground on which to refuse the request.
- 2.5 In March 2006 the original developer sold the site and the new developer obtained planning permission for 11 houses. The new developer requested a further relaxation of the restrictive covenant. As such a change from the original 4, and subsequent 6, dwellings on the site to the proposed 11 represented a fundamental change, this matter was referred to Committee for decision.

- 2.6 Although not directly impinging on this request the new developer prior to gaining planning permission for 11 houses had submitted an application for 13 houses. This was refused by the Development Control Committee.
- 2.7 The Parish Council had given their backing to the 11 house development in the planning process and it is understood they were disappointed that the developer was seeking to extend the development to 13 houses. Indeed they wrote to the District Council on the 25th September 2006 asking that relaxation of the covenant be withheld if a planning appeal for the 13 dwellings were successful. They subsequently wrote on the 10th October asking that the relaxation be withheld for any redevelopment.

3.0 Legal Opinion

- 3.1 Due to the complexity of this case, and the many questions surrounding the enforceability of this covenant, Counsel's Opinion has been obtained.
- 3.2 The Opinion analyses the background to the imposition of the original covenant under the Housing Act 1985 and the relevant statute and case law relating to restrictive covenants.
- 3.2 Counsel concludes that, in the circumstances of this case, and based upon the court's decision in *Briggs v McCuster*, the covenant restricts only the future use of the site (i.e. for dwellinghouses) but not the number of dwellinghouses that may be built upon it. Therefore, the Council cannot prevent the building of 11 properties on this site because there is no breach of covenant.

4.0 Financial Implications

- 4.1 There are no direct financial considerations for the Council in this matter. However if the Council withheld relaxation of the covenant and the developer appealed against that decision to the Court the Council would face legal costs in representing itself.

5.0 Corporate Implications

- 5.1 None at this time.

6.0 Community Implications

- 6.1 These have been considered as part of the planning process.