LAND REAR OF MERMAID SPINNEY, BOXWORTH: RELEASE OF COVENANT

Purpose

1. To seek agreement in principle by the Housing Portfolio Holder for the Council to release the restrictive covenant on the above land (see area outlined in red on attached plan).

Recommendations

2. That the Housing Portfolio Holder agrees that the garden covenant imposed by the Council on the land rear of Mermaid Spinney, Boxworth can be released, subject to valuation and subject to planning permission being obtained for one dwelling on the land.

Reasons for Recommendations

3. The Council would receive a capital sum from the release of the covenant.

4. That no clear reason is evident as to why the covenant should not be released.

Background

5. The land forms part of land originally acquired by the Council in 1950 for the development of housing. In 1969 it was rented to the owner of Mermaid Spinney for use as an allotment and when the second phase of the Hunting Grove development (nos 7 – 11) took place in 1993, the land became surplus to the Council’s requirements.

6. The land was then sold for garden use only to the owner of Mermaid Spinney, at the price of £1,000.

7. A request has been received from the current owner of Mermaid Spinney for the restrictive garden covenant to be released, to make available the option of building on the land.

Considerations

8. Outline planning permission currently exists for one dwelling at the rear of Mermaid Spinney using the land in question as a garden (ref. S/1218/09/O).

9. The owner of Mermaid Spinney wishes to have the option of altering the proposed layout of the new dwelling so that it sits approximately 10 metres further back from her property on the land in question, in line with the existing dwellings at 7 – 11 Hunting Grove. There would be no change to the proposed access from the High Street.
10. Altering the position of the proposed new dwelling would avoid any overlooking issues with the Hunting Grove properties.

11. A significant area of garden (approximately 19 metres in length) would remain between the proposed dwelling in its new position and the woodland to the rear. This distance would be the same as that between the woodland and the dwellings at 9 – 11 Hunting Grove.

12. Releasing the covenant on part of the land (10 metres from southern edge) would ensure that no development could take place in the future on the land nearest to the rear woodland.

13. A precedent would not be set by lifting this covenant as any future requests of this nature would be considered on an individual basis.

14. Release of the covenant would be subject to valuation that would take into account the enhanced value of the land. It is estimated that the cost of release could be in the region of £60,000 - £70,000.

**Options**

15. Subject to planning permission being obtained for the proposed new dwelling in a revised position on the land in question, offer to release the restrictive covenant at a price recommended by the valuer.

16. Subject to planning permission being obtained for the proposed new dwelling in a revised position on the land in question, offer to release the restrictive covenant on part of the land (10 metres from southern edge) at a price recommended by the valuer.

17. Decline the request to release the restrictive covenant on the land.

**Implications**

18. **Financial**
   
   With Option 1, subject to planning permission being obtained, the Council would receive a capital sum for the release of covenant.

<table>
<thead>
<tr>
<th>Legal</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Staffing</td>
<td></td>
</tr>
<tr>
<td>Risk Management</td>
<td></td>
</tr>
<tr>
<td>Equality and Diversity</td>
<td></td>
</tr>
</tbody>
</table>

| Equality Impact | No |
| Assessment completed | Not relevant |
| Climate Change |  |

**Consultations**

19. Councillors Waters and Hall were consulted. Cllr Waters objects to the release of the covenant on the grounds that the site was sold to be used as garden land and that a precedent would be set by lifting a covenant to change garden land to development land.
20. Boxworth Parish Council object to the release of the covenant on the following grounds:

(a) It is the Parish Council’s opinion that the covenant was put in place specifically to prevent development on the land.
(b) Nothing has changed in the meantime and they do not see any overwhelming reason why the original intent should be changed.
(c) A significant precedent has already been set in the village by approving the outline application for the new dwelling and a further precedent should not be set by lifting a restrictive covenant.
(d) A small wood exists rear of Mermaid Spinney that is rich in wildlife. If the new dwelling were moved closer to this woodland it could be detrimental to the natural habitat.

Effect on Strategic Aims

21. **AIM: Commitment to providing a voice for rural life:**
It is considered that a new dwelling rear of Mermaid Spinney would be more suitably positioned on the land in question.

Conclusions / Summary

22. A request has been received from the current owner of Mermaid Spinney for the release of a restrictive garden covenant imposed when the land to the rear was purchased in 1993, in order to make available the option of building on the land. Outline planning permission exists for one new dwelling at the rear of the property, using the land in question as garden. Release of the covenant would enable the position of the new dwelling to be altered so that it aligned better with existing dwellings in Hunting Grove. Releasing the covenant on part of the land would ensure that no development could take place in the future on the land nearest to the rear woodland. Either way it would enhance the value of the land and would thus be subject to new valuation, with the Council benefitting from the capital sum payable.

**Background Papers:** the following background papers were used in the preparation of this report:

None.

**Contact Officer:** Jenny Clark – Lands Officer
Telephone: (01954) 713336