

	<p style="text-align: center;">Assets, Regeneration and Growth Committee</p> <p style="text-align: center;">24th April 2017</p>
<p style="text-align: right;">Title</p>	<p>Release of restrictive covenant for United Reformed Church, Chesterfield Road, Barnet</p>
<p style="text-align: right;">Report of</p>	<p>Director of Resources</p>
<p style="text-align: right;">Wards</p>	<p>Underhill</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Urgent</p>	<p>No</p>
<p style="text-align: right;">Key</p>	<p>No</p>
<p style="text-align: right;">Enclosures</p>	<p>Plan –</p>
<p style="text-align: right;">Officer Contact Details</p>	<p>Anisa Darr Director of Resources Anisa.darr@barnet.gov.uk</p>

Summary

This report seeks in principle agreement to release the restrictive covenant (shown 'shaded grey' on the attached plan titled 'Covenant Analysis'). This is located over the rear part of the land, which is owned by the United Reformed Church. The effect of the covenant is to limit development to a Church, community hall or caretaker's house, the beneficiary being the Council. The Church obtained planning consent in July 2014, to replace the existing aged buildings with modern worship and community facilities, together with a development of five houses. As the beneficiary of the covenant, following the planning consent affecting the development of two houses, the Council is entitled to be compensated in exchange for the release of this restriction. The payment is based on the residual land value for residential development; allowing for a right of access to the houses across the Church's frontage land.

The report seeks delegated authority for the Director of Resources to agree the release of

the restrictive covenant in return for a payment of £176,000 to the Council. There is also an overage clause in the agreement, based on the net sales prices of the houses.

Recommendations

- 1. That the Assets, Regeneration and Growth Committee agree in-principle, to the Council releasing the restrictive covenant in lieu of a payment of £176,000.**
- 2. That the Assets, Regeneration and Growth Committee authorise delegation to the Director of Resources to negotiate the detail of the legal documentation for the release of the restrictive covenant and complete the deed of release.**

1. WHY THIS REPORT IS NEEDED

The United Reformed Church were endeavouring until 2014 to obtain Planning Permission to replace their existing aged buildings with modern worship and community facilities. Having prepared a detailed development brief and securing a development partner, to whom they could transfer the land, with the benefit of planning permission to build five houses, the church would be able to exchange this for a new worship and community facility at no cost.

The effect of the Planning Permission granted on 7th July 2014, was to reverse the location of the Church (the application proposed the Church at the rear and residential at the front of the site) meant that two houses became the subject of the restrictive covenant. The feasibility for the replacement of the Church could not be justified without the total of five houses planned for development. The Church had no option, without appealing the Planning Permission, than to approach the Council to secure the release of the restrictive covenant.

Initially the Church claimed that the provision of community space, should be sufficient for the Council to forgo any financial compensation for the release of the restrictive covenant. However as the space would not be deemed a Council asset and without sufficient evidence this would serve the community at large, it would not be possible for the Council to comply with S123 of the Local Government Finance Act 1972. After several months negotiating a settlement, a figure of £176,000 has been agreed subject to the Council's and Church's respective approvals.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The recommendation in this report enables the Council to release the United Reformed Church from the restrictive covenant, to the extent that the Council is able to do so, to allow the Church to secure the funding for the provision of with modern worship and community facilities.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 This is the only option available to the United Reformed Church since the Planning Permission stipulates that the new Church and community space must be located on the existing footprint. The residential development at the rear, upon which the covenant exists, will be transferred to their development partner. This provides the enabling finance to pay for the new Church and community space.

4. POST DECISION IMPLEMENTATION

- 4.1 The report seeks agreement that the Assets, Regeneration and Growth Committee authorise delegation to the Director of Resources to negotiate the detail of the legal documentation for the release of the restrictive covenant, to the extent that the Council is entitled to do so and complete it; following the signing of a DPR approval.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 The release of the restrictive covenant provides the Council with a capital sum, based on the development value of the land with planning permission for residential use. An appraisal obtained from the Valuation Office provides the basis for a negotiated settlement figure of £176,000. It is considered this represents 'best value' for money under Section 123 of the Local Government Finance Act 1972.
- 5.2.2 Each party will bear their own surveyor and legal costs. For Barnet, the capital receipts net of costs, will be available to support the Council's Capital Programme. Additionally there is a clause in the proposed deed agreement where an overage payment is triggered, should the sales price of the residential units exceed a certain threshold.

5.3 Legal and Constitutional References

- 5.3.1 Council Constitution, Responsibility for Functions, Annex A – The Assets, Regeneration and Growth Committee has responsibility for "Asset Management – all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council and the approval of non-statutory plans that concern asset management matters. Certain matters are further delegated to officers but such delegations do not include disposals of an interest for sums exceeding £100,000.
- 5.3.2 Section 2.1 of The Management of Assets, Property and Land Rules, contained in the Council's constitution states that The Management of Asset, Property and Land Rules provide the governance structure within which the

Council may acquire, lease, act as landlord, licence, develop, appropriate, change use of, or dispose of Assets within its Asset Portfolio. Section 123 of the Local Government Act 1972 requires the Council to obtain the best consideration reasonably obtainable in return for a disposal of the property interest.

5.4 Risk Management

5.4.1 The development will not proceed unless the restrictive covenant is lifted, which would result in the loss of a capital receipt of £176,000 and would prevent the Church from carrying out the new development.

5.4.2 In relation to this decision, the Council can only deal with the owner of the land, which is subject to the covenant in question.

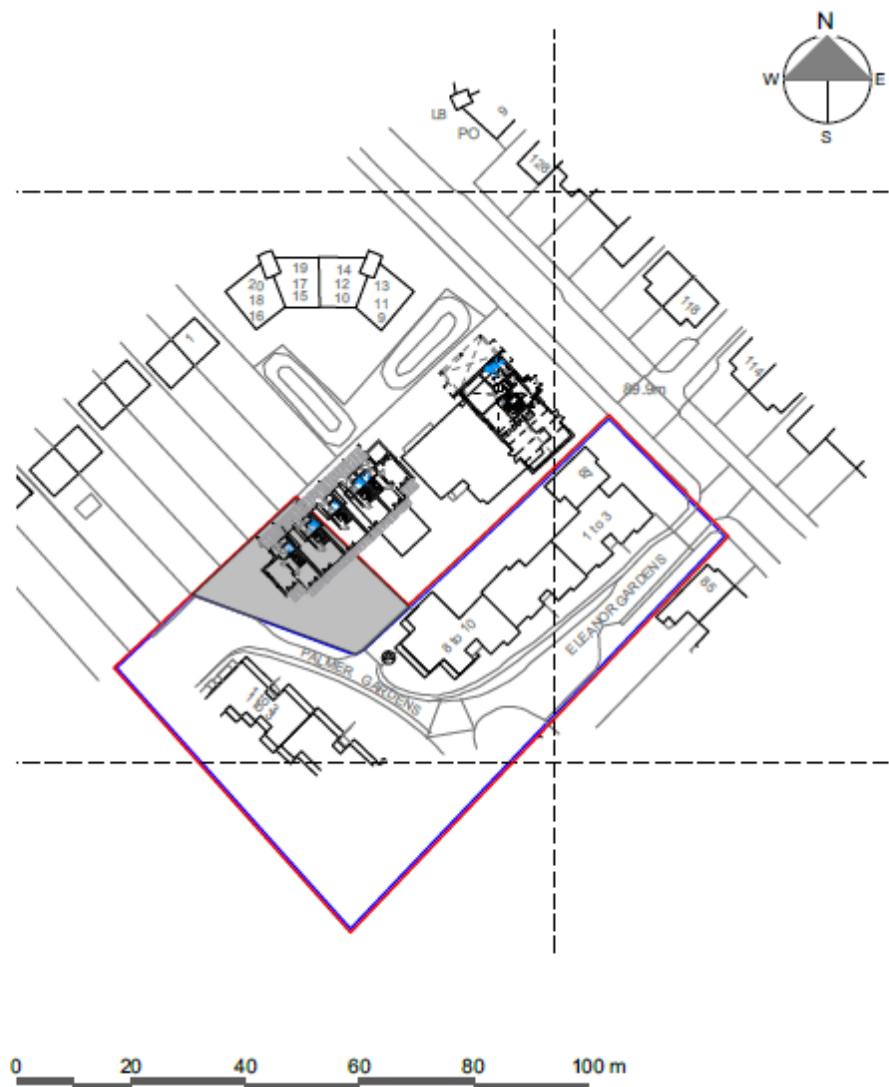
5.5 Equalities and Diversity

5.5.1 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to: eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010; advance equality of opportunity between people who share a relevant protected characteristic and those who do not and to foster good relations between people who share a relevant protected characteristic and those who do not.

5.5.2 The broad purpose of this duty is to integrate considerations of equality into day to day business and to keep them under review in decision making, the design of policies and the delivery of services.

5.5.3 Consultation and Engagement

6. BACKGROUND PAPERS



URC : Chesterfield Rd Barnet
SITE LOCATION PLAN WITH COVENANT ANALYSIS

scale 1:1250