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<b>REPORT TO:</b>	<b>HOUSING AND COMMUNITY SERVICES COMMITTEE</b>	<b>AGENDA ITEM:</b> <b>13</b>
<b>DATE OF MEETING:</b>	<b>23<sup>rd</sup> November 2006</b>	<b>CATEGORY:</b> <b>DELEGATED</b>
<b>REPORT FROM:</b>	<b>DIRECTOR OF COMMUNITY SERVICES</b>	<b>OPEN:</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>Mark Aiflat x 5892</b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>Former site of 22-28 Askew Grove</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>Repton</b>	<b>TERMS OF REFERENCE: HCS01</b>

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## **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 (see appendix 1) to allow the construction of 11 properties on the site. This report was deferred at the October 12<sup>th</sup> 2006 meeting 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 has now obtained planning permission for 11 houses. The new developer has now 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 represents a fundamental change this matter is 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 and the developer is currently appealing against that decision.
- 2.7 The Parish Council had given their backing to the 11 house development in the planning process and it is understood they are disappointed that the developer is still seeking to extend the development to 13 houses. Indeed they wrote to the District Council on the 25<sup>th</sup> September 2006 (see appendix 2) asking that relaxation of the covenant be withheld if the planning appeal for the 13 dwellings is successful. They subsequently wrote on the 10<sup>th</sup> October (see appendix 3) asking that the relaxation be withheld for any redevelopment.

### **3. Detail**

- 3.1 In legal terms there is a covenant restricting development on the site. Although the site has planning permission for 11 houses, without relaxation of the covenant the developer can only build 6 properties on the site. Therefore if the Council in its capacity as owner of nearby properties, and holder of the benefit of the covenant, has justifiable grounds upon which to refuse the application and block the 11-house development, it can do so.
- 3.2 The attached plan (appendix 1) shows the location of the site. The Council's few remaining properties in the vicinity are shaded. In reaching its decision as to whether or not to relax the covenant, Committee should consider the impact of the proposed development upon these remaining properties.
- 3.3 The Council has already considered many aspects of the proposed development before granting planning permission e.g. property density, parking and general site access. Committee may reconsider these aspects but should be mindful that these have already been considered during the planning process and found to be satisfactory in the wider context.
- 3.4 Following deferral of a decision on this matter at the October 12<sup>th</sup> 2006 Committee additional legal opinion will be available at the meeting.

### **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.