

# Cheltenham Borough Council

## Cabinet 15<sup>th</sup> January 2013

### Release of Restrictive Covenant-

Land formerly owned at Leckhampton Industrial Estate,  
205 Leckhampton Road, Cheltenham

<b>Accountable member</b>	<b>Cabinet Member Finance- Councillor John Rawson</b>
<b>Accountable officer</b>	<b>David Roberts- Head of Property and Asset Management</b>
<b>Ward(s) affected</b>	<b>Leckhampton</b>
<b>Key Decision</b>	<b>Yes/No</b>
<b>Executive summary</b>	<p>In 2009, Cheltenham Borough Council disposed of the freehold of a thin strip of land on the northern boundary of Leckhampton Industrial Estate, Leckhampton Road which extends to circa 1800 sq.m. It was sold subject to a covenant restricting its use to B2 (General industrial) and the value of the land was agreed accordingly.</p> <p>The whole estate is now subject to potential redevelopment and the Council can benefit from the uplift in land value, if it agrees to modify the user covenant on this thin strip of land, appropriately.</p> <p>The original purpose of imposing a restrictive user covenant was to protect the councils' interest and secure additional value if the proposed use changed. This opportunity is now presenting itself.</p>
<b>Recommendations</b>	<p>It is recommended that the Cabinet agrees to a modification agreement which allows the council to benefit from any uplift in value, pertaining to a change of use from B2 General Industrial, in proportion to the area of land previously sold by the council (0.18ha).</p> <p>It is recommended that the Cabinet authorises the Head of Property and Asset Management, in consultation with the Cabinet Member Finance, to negotiate and conclude an Agreement with the owner of Leckhampton Industrial Estate granting that owner the right, within a period of 5 years from the date of the Agreement, to call for the variation of the Covenant restricting the use of the area of land described in the report upon payment of such sum determined by the Head of Property and Asset Management as being the market value for such variation.</p>

<b>Financial implications</b>	<p>Any capital receipt generated could be used to support the Council's capital programme.</p> <p><b>Contact officer: Nina Philippidis</b> <a href="mailto:Nina.Philippidis@cheltenham.gov.uk">Nina.Philippidis@cheltenham.gov.uk</a></p> <p>01242 775221</p>
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Modification to Restrictive Covenant

Leckhampton Industrial Estate, Cheltenham

<b>Legal implications</b>	<p>The legal agreement will clearly set out the terms agreed between the parties</p> <p><b>Contact officer: Rose Gemmell</b> <a href="mailto:Rose.gemmell@teWKesbury.gov.uk">Rose.gemmell@teWKesbury.gov.uk</a> 01684 272014</p>
<b>HR implications (including learning and organisational development)</b>	Not Applicable.
<b>Key risks</b>	If Cabinet agree to enter into an agreement to modify the Restrictive Covenant to enable redevelopment of the site, then the Council could benefit from a proportionate uplift in value for the land.
<b>Corporate and community plan Implications</b>	<p>The Council's Corporate Strategy 2010-2015 has adopted a number of key objectives to assist in meeting its goals during the 5 year plan period.</p> <p>The Council also adopted an Asset Management Plan in July 2010 which seeks to support these corporate objectives through a number of actions. In relation to this site, the key corporate objectives and supporting Asset Management Plan actions are:</p> <ul style="list-style-type: none"> <li>• <i>Value for Money</i>-Investigate opportunities to dispose of surplus and investment property.</li> <li>• Strengthening our Economy - Identification of sites with potential for increasing residential and employment capacity.</li> </ul>
<b>Environmental and climate change implications</b>	This proposal does not have any environmental or climate change implications.

## **1. Background**

- 1.1** The site is an existing multi-let industrial estate. It extends to some 1800 sq.m. (0.18 ha/ 0.44 acres). Site plan attached at **Appendix A**.
- 1.2** The site is accessed from Leckhampton Road, to the east, and abuts to the rear of residential properties to the north (facing Collumend Drive and Liddington Road). To the south and west, the estate is bounded by grazing farm land, owned by Cheltenham Borough Council and leased to a local farmer. The property also sits to the north of Leckhampton Scout Hall, which shares the access from Leckhampton Road.
- 1.3** Leckhampton Industrial Estate (aka former Vulcan Works) was originally owned by Cheltenham Borough Council and was sold off piecemeal. The site is now held by the Gardner Trust which operates it on a multi-let, mixed industrial use basis.
- 1.4** In 2009, Cheltenham Borough Council disposed of the freehold of the final piece of the estate, a thin strip of land on the northern boundary of Leckhampton Industrial Estate, Leckhampton Road which, extends to circa 1800 sq.m. The land is subject to a permanent Right of Way in favour of the Gardner Trust, the owner of the Industrial Estate.
- 1.5** The Gardner Trust purchased the Council's land in 2009 at an agreed price of £77,000. (£45,000 restricted land value and £32,000 for rents owing on an aerial mast erected on site).
- 1.6** The sale value was agreed with restrictions limiting the use of the land to Class B2 (General Industrial) of the General Permitted Development (Amendment ) Order 2005. It is this Restrictive Covenant which the owner is now seeking to have modified to permit redevelopment options to be explored through the planning process.

## **2. Reasons for recommendations**

- 2.1** The Council sold the freehold of this land in 2009. Placing the restriction upon use of the land at the sale in 2009, restricted the original sale value for the land.
- 2.2** The only interest the Council retains is through the Restrictive Covenant. Agreeing to a modification to this covenant could provide the council with a substantial capital receipt. It is understood that the purpose of placing the Restrictive Covenant upon the land was to protect the Council's financial interest with the likelihood that the site would be re-developed in the future.
- 2.3** It is recommended that the Council agrees to enter into a modification agreement whereby the landowner can request a modification of the restrictive covenant on the whole or part of the land, in return for financial consideration. This would allow the council to benefit from any uplift in value, pertaining to a change of use from B2 General Industrial, in proportion to the area of land previously sold by the council (0.18ha).
- 2.4** It is noted that the remainder of the site could probably be redeveloped without the subject land having the restriction modified and therefore, retaining the restriction would not necessarily protect the employment use.
- 2.5** It is recommended that Cabinet approval is sought, in case the payment required under the modification agreement exceeds the highest estimate of £250,000.

### 3. Alternative options considered

- 3.1 If the council decided not to agree to modify the Restrictive Covenant, there would be no capital receipt forthcoming to the Council. The subject land could only be used for industrial or commercial purposes.
- 3.2 The site not subject to the restrictive covenant could be redeveloped within its current land use permission and there would be no payment due to the Council.
- 3.3 As the subject land is only a slim strip of the remaining estate, not agreeing to modify the covenant would be unlikely to impede the redevelopment of the remainder of the site, if the landowner was so minded. Therefore, not agreeing to remove the restriction would not necessarily protect the site from redevelopment but it would prevent the Council from receiving any financial benefit.

### 4. Consultation and feedback

- 4.1 This proposal was taken before Asset Management Working Group on 8<sup>th</sup> November 2012.
- 4.2 The proposal was supported by this cross party group.

### 5. Performance management –monitoring and review

- 5.1 To review the decision made at Cabinet on 15<sup>th</sup> January 2013.
- 5.2 To liaise with our Legal advisers to agree legal terms for the Modification of the Restrictive Covenant including a suitable valuation mechanism to identify an appropriate land value for the site based upon the planning consent secured.
- 5.3 To maintain contact with the land owner to review progress on redevelopment proposals and to monitor payments due to the Council.

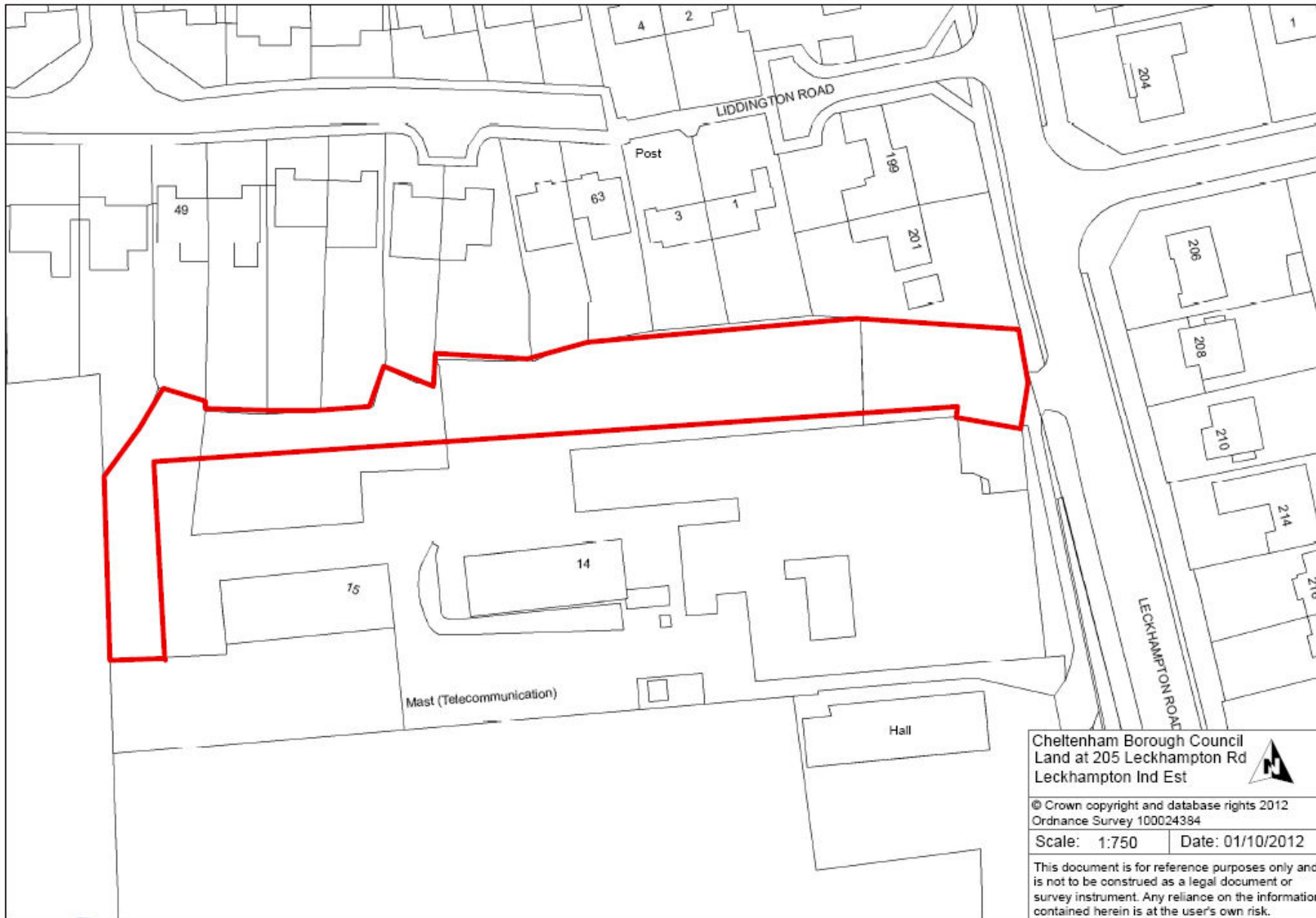
<b>Report author</b>	<b>Contact officer:</b> David Roberts, Head of Property and Asset Management. <a href="mailto:David.Roberts@cheltenham.gov.uk">David.Roberts@cheltenham.gov.uk</a> 01242 264151
<b>Appendices</b>	1. Risk Assessment 2. Site Plan
<b>Background information</b>	

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
1	Positive risk- If Cabinet agree to enter into an agreement to modify the Restrictive Covenant to enable redevelopment of the site then the Council could benefit from a proportionate uplift in value for the land.	DLR	8 <sup>th</sup> Nov 2012	5	6	30	Accept	Report to Cabinet	End of Dec 2012	DLR	
2	If the restrictive covenant is not modified then CBC will miss out on any uplift as the remainder of the site could be redeveloped without the strip of land subject to the covenant	DLR	8 <sup>th</sup> Nov 2012	5	1	5	Accept	Report to Cabinet	End of Dec 2012	DLR	
<b>Explanatory notes</b>											
<p><b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p><b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											

**APPENDIX A**

**SITE PLAN**

**Land at Leckhampton Industrial Estate  
subject to Restrictive Covenant**



Cheltenham Borough Council  
 Land at 205 Leckhampton Rd  
 Leckhampton Ind Est

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 Ordnance Survey 100024384

Scale: 1:750	Date: 01/10/2012
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Modification to Restrictive Covenant

Leckhampton Industrial Estate, Cheltenham