

DECISION NOTICE



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Notice and report e-
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Democratic
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Team and Report
Author , on
18.04.2016

NOTICE OF DECISION MADE BY PORTFOLIO HOLDER DECISION: Lawton 7.15

(To be made available at the main offices of the Council and sent to all members of the Council within 3 working days of the decision.)

The Council's Constitution (Standing Order 28 – Recording of Executive Decisions; Part 3 Section D4 – Delegations to Cabinet members; and Part 4 D Access to Information Procedure Rules) requires that when any decision is made by an individual Portfolio Holder a record of the decision, including a statement of the reasons for it and any alternative options considered and rejected, must be prepared and published normally **within 3 working days**.

In accordance with this requirement notice is hereby given that Councillor C J Lawton, being the Portfolio Holder for Housing, made the decision detailed below on Friday 15 April 2016. This decision is not a key decision.

This notice is published on Monday 18 April 2016.

In accordance with the terms of the Constitution (Part 3 Section D – Overview and Scrutiny (including Call-In Procedures)), the decision detailed below will come into force, and may then be implemented, on Tuesday 26 April 2016 (i.e. following the expiry of 5 working days following the date of publication of this notice) unless during that period a notice, where either a Ward Representative (in relation to a matter in their ward) or two members of the Performance Monitoring Panel or any three members formally request in writing (requests for Call-In must be given on a form designed for that purpose, and must be signed by each subscriber to the call-in) to the Senior Legal Officer (or such other officer as is nominated by the Senior Legal Officer) before the end of the five clear Working Day period specified in the above paragraph in relation to a particular decision by the Leader, a Cabinet Member or Cabinet, a Sub-Committee of Cabinet or an officer, then that decision shall be referred to the Performance Monitoring Panel. Such request must contain a justifiable reason for the reference and one or more of the signatories to the reference must forward to the Senior Legal Officer at least five clear Working Days before the date of the Committee which is to consider the matter a brief explanation or statement as to the concerns of the signatories in the matter, and what alternative decision(s) that member/those members consider should be taken. (The call-in period expires at 5pm on the 5th working day following publication of this notice, or 4.30pm if the 5th working day is a Friday.)

Matter to which decision relates

Restrictive covenants at 16 Washway Road, Holbeach – To consider a request for the covenants to be released or varied. (report of the Executive Director – Place is enclosed).

DECISION:

1. That the Council agree to vary the restrictive covenants in place at 16 Washway Road, Holbeach, to enable the owner to establish a business as detailed within this report, for the sum of £6,500. The final terms to be agreed by the Housing Landlord Manager in consultation with the Portfolio Holder for Housing;
2. That the applicant be responsible for reimbursing the Council's legal and valuation fees whether or not the matter proceeds to completion.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

1. Do Nothing (not recommended). This option would mean that the restrictive covenant would remain in place and would prevent the applicant from being able to establish a new business. This may be open to legal challenge and present a potential reputational risk. This option was not recommended.
2. To agree to vary the restrictive covenants at 16 Washway Road, Holbeach, to enable the owner to establish a new business, for no financial consideration (not recommended). The advice from Legal Services Lincolnshire confirms that the Council is able to charge a consideration for the applicant's request. For this reason this option was not recommended.

REASONS FOR THE DECISION

1. To enable the applicant to establish a business from their home (subject to any other permissions required).
2. The Council will receive a financial consideration for the varying/removal of the covenants, in the sum of £6,500, which will benefit the Housing Revenue Account (HRA).

Conflicts of interest declared by an executive member, relating to the decision, and any dispensations granted

None.

REPORT

- 1 Lawton 7.15 - Restrictive covenants at 16 Washway Road, Holbeach - (Pages
To consider a request for the covenants to be released or varied. (report 1 - 6)
of the Executive Director – Place is enclosed).

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Executive Director - Place
To: Portfolio Holder for Housing (Councillor C Lawton)
(Author: Housing Landlord Manager – Richard Scorthorne)
Subject: Restrictive covenants at 16 Washway Road, Holbeach
Purpose: To consider a request for the covenants to be released or varied

Recommendations:

- 1) That the Council agree to vary the restrictive covenants in place at 16 Washway Road, Holbeach, to enable the owner to establish a business as detailed within this report, for the sum of £6,500. The final terms to be agreed by the Housing Landlord Manager in consultation with the Portfolio Holder for Housing;
- 2) That the applicant be responsible for reimbursing the Council's legal and valuation fees whether or not the matter proceeds to completion;

1.0 BACKGROUND

- 1.1 In 1982, the Council sold no. 16 Washway Road, Holbeach. The sale included a number of restrictive covenants, including the following:
 1. *Not to use the Property or any future building or buildings thereon for carrying on any trade business or manufacture of any kind but as a private dwelling and/or private garage and outbuildings to such dwelling*
 2. *No act matter or thing shall be done committed or placed upon the Property which may be or grow to be offensive or detrimental to the quiet or enjoyment of the neighbourhood*
 3. *No hoarding or advertisement shall be erected or placed upon the property*
- 1.2 The new owners of the property, who purchased it in late 2015, have indicated that they wish to consider establishing a business which they would operate from their home. Precise details of the proposed business have not been determined, but they have indicated that it may include the following:
 - Sewing based business – repairing horse rugs
 - Dog walking
 - Animal transportation
 - Cattery
- 1.3 The 3 covenants listed in 1.1 above would influence their ability to operate a business from the property, so the owners would like to seek the Council's agreement to vary or remove the covenants to enable them to establish their business (in addition to any planning permissions etc).
- 1.4 In this case, the matter is complicated further because nos. 11 and 15 Washway Road were sold after no. 16. As a consequence, the owners of those properties can enforce the restrictive covenants just as the Council can. For this reason, if the Council did agree to

vary or remove the restrictive covenants itself, the owners of 16 would also need to seek agreement from the owners of nos. 11 and 15 (who have already indicated that they are willing to remove the covenants themselves).

- 1.5 A plan is included in Appendix A to this report which shows the location of the property.
- 1.6 Advice has been sought from Legal Services Lincolnshire about this request because restrictive covenants can be complex. This case is no exception. Legal Services Lincolnshire have confirmed that they have experience of similar cases to this and that, in those cases, a consideration has been charged for the varying/removal of the covenants. In this case, the Council's valuer has determined that the varying/release of the covenants to enable the owner to establish a business has a value of £6,500, and the applicant has informally agreed to pay this sum.
- 1.7 Consultation has been carried out with ward members, the Portfolio Holder and relevant officers. No adverse comments were received.

2.0 **OPTIONS**

2.1 Option 1 – Do Nothing (not recommended)

- 2.1.1 This option would mean that the restrictive covenant would remain in place and would prevent the applicant from being able to establish a new business. This may be open to legal challenge and present a potential reputational risk. This option is not recommended.

2.2 Option 2 – To agree to vary the restrictive covenants at 16 Washway Road, Holbeach, to enable the new owner to establish a new business, for a financial consideration (recommended)

- 2.2.1 The advice from Legal Services Lincolnshire confirms that a consideration can be charged in this case. The valuation advice provides a valuation of £6,500, which the applicant has informally agreed to pay. Consequently, this option is recommended.

2.3 Option 3 – To agree to vary the restrictive covenants at 16 Washway Road, Holbeach, to enable the owner to establish a new business, for no financial consideration (not recommended)

- 2.3.1 The advice from Legal Services Lincolnshire confirms that the Council is able to charge a consideration for the applicant's request. For this reason this option is not recommended.

3.0 **REASONS FOR RECOMMENDATIONS**

- 3.1 To enable the applicant to establish a business from their home (subject to any other permissions required).

- 3.2 The Council will receive a financial consideration for the varying/removal of the covenants, in the sum of £6,500, which will benefit the Housing Revenue Account (HRA).

4.0 **EXPECTED BENEFITS**

- 4.1 To enable the applicant to establish a business from their home (subject to any other permissions required).

- 4.2 The Council will receive a financial consideration for the varying/removal of the covenants, in the sum of £6,500, which will benefit the Housing Revenue Account (HRA).

5.0 **IMPLICATIONS**

5.1 **Carbon Footprint / Environmental Issues**

5.1.1 It is the opinion of the report author that there are no implications.

5.2 **Constitution & Legal**

5.2.1 Advice has been sought from Legal Services Lincolnshire about this request because restrictive covenants can be complex. This case is no exception. Legal Services Lincolnshire have confirmed that they have experience of similar cases to this and that, in those cases, a consideration has been charged for the varying/removal of the covenants. In this case, the Council's valuer has determined that the varying/release of the covenants to enable the owner to establish a business has a value of £6,500, and the applicant has informally agreed to pay this sum.

5.3 **Contracts**

5.3.1 The nature of this matter means it will involve some contractual work and implications including the applicant being required to pay the Council's legal and valuation fees. All legal work on behalf of the Council will be undertaken by Legal Services Lincolnshire.

5.4 **Corporate Priorities**

5.4.1 It is the opinion of the report author that there are no implications.

5.5 **Crime and Disorder**

5.5.1 It is the opinion of the report author that there are no implications.

5.6 **Equality and Diversity / Human Rights**

5.6.1 It is the opinion of the report author that there are no implications.

5.7 **Financial**

5.7.1 The applicant will be required to pay a consideration of £6,500 which will provide a receipt to the Council's Housing Revenue Account (HRA). The applicant will also be responsible for reimbursing the Council's legal and valuation fees whether or not this matter proceeds to completion.

5.8 **Health & Wellbeing**

5.8.1 It is the opinion of the report author that there are no implications.

5.9 **Risk Management**

5.9.1 The recommendations to this report avoid the risk of legal challenge and reputational risk to the Council. This is explained further in section 2.0 of this report.

5.10 **Safeguarding**

5.10.1 It is the opinion of the report author that there are no implications.

5.11 Staffing

5.11.1 It is the opinion of the report author that there are no implications.

5.12 Stakeholders / Consultation / Timescales

5.12.1 Consultation has been carried out with ward members, the Portfolio Holder and relevant officers. No adverse comments were received.

6.0 WARDS/COMMUNITIES AFFECTED

6.1 This report and its recommendations affect the Holbeach Hurn ward only.

7.0 ACRONYMS

7.1 None

Background papers:- None

Lead Contact Officer

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Key Decision: No

Exempt Decision: No

This report refers to a Discretionary Service

Appendices attached to this report:

Appendix A – Location Plan

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