

DECISION NOTICE



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Notice and report e-
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Democratic
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Team and Report
Author , on
02.06.16

NOTICE OF DECISION MADE BY PORTFOLIO HOLDER DECISION: LAWTON 1.16

(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 Thursday 2 June 2016. This decision is not a key decision.

This notice is published Thursday 2 June 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 **Friday 10 June 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 covenant at 46 Garnsgate Road, Long Sutton – To consider a request for the covenant to be varied (report of the Executive Director – Place enclosed).

DECISION (IF URGENT PROVIDE REASONS)

- a) That the Council agree to vary the restrictive covenant in place at 46 Garnsgate Road, Long Sutton, to enable the owner to develop a new detached house and garage as detailed within this report. The release to be subject to a consideration of £12,045 with final terms to be agreed by the Housing Landlord Manager in consultation with the Portfolio Holder for Housing; and
- b) 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 – This option would mean that the restrictive covenant would remain in place and would prevent the applicant from being able to develop the proposed new house and garage. This may be open to legal challenge and present a potential reputational risk. This option is not recommended.
- 2) To agree to vary the restrictive covenant at 46 Garnsgate Road, Long Sutton, to enable the owner to develop a new detached house and garage, for no financial consideration – 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.

REASON OR REASONS FOR THE DECISION

- 1) To enable the applicant to develop a new house and garage for which they have secured planning permission; and
- 2) The Council will receive a financial consideration for the varying of the covenant in the sum of £12,045, 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 1.16 - Restrictive Covenant at 46 Garnsgate Road, Long Sutton (Pages
- To consider a request for the covenant to be varied. (Report of the 1 - 4)
Executive Director – Place enclosed.)

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SOUTH HOLLAND DISTRICT COUNCIL

Report of: Executive Director - Place

To: Portfolio Holder for Housing
(Councillor C J Lawton)

(Author: Housing Landlord Manager - Richard Scorthorne)

Subject: Restrictive covenant at 46 Garnsgate Road, Long Sutton

Purpose: To consider a request for the covenant to be varied

Recommendations:

- 1) That the Council agree to vary the restrictive covenant in place at 46 Garnsgate Road, Long Sutton, to enable the owner to develop a new detached house and garage as detailed within this report. The release to be subject to a consideration of £12,045 with final terms to be agreed by the Housing Landlord Manager in consultation with the Portfolio Holder for Housing; and
- 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 1996, the Council sold no. 46 Garnsgate Road, Long Sutton. The sale included a restrictive covenant which states:

“Not to use the Property or any part thereof for any purpose other than that of a single dwellinghouse and garden to such dwellinghouse without the written consent of the Council.”

1.2 The current owner of the property, who purchased it in late 2015, obtained planning permission in March 2016 (under ref: H11-0009-16) for the construction of a new detached house and garage on part of the garden to 46 Garnsgate Road.

1.3 The owner has now contacted the Council to request the restrictive covenant be varied to enable them to proceed with the construction of this new house.

1.4 Advice has been sought from Legal Services Lincolnshire about this request because restrictive covenants can be complex. Taking into account advice from Legal Services Lincolnshire and the valuer, in this case there appears to be a loss of amenity to neighbouring land retained by the Council which affects the value of that retained land. Consequently, the Council is able to seek a financial consideration for the varying of the covenant in this case.

1.5 The District Valuer has provided a valuation for the varying of the covenant to enable the development to proceed, providing a figure of £12,045. This has been provisionally agreed in principle with the applicant.

1.6 Consultation has been carried out with ward members, the Portfolio Holder and relevant officers. One query was raised about the valuation which was considered to be too low. The method of valuation was explained further and no objection was 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 develop the proposed new house and garage. 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 covenant at 46 Garnsgate Road, Long Sutton, to enable the owner to develop a new detached house and garage, 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 £12,045, which the applicant has informally agreed to pay. Consequently, this option is recommended.

2.3 Option 3 – To agree to vary the restrictive covenant at 46 Garnsgate Road, Long Sutton, to enable the owner to develop a new detached house and garage, 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 develop a new house and garage for which they have secured planning permission.

3.2 The Council will receive a financial consideration for the varying of the covenant in the sum of £12,045, which will benefit the Housing Revenue Account (HRA).

4.0 **EXPECTED BENEFITS**

4.1 To enable the applicant to develop a new house and garage for which they have secured planning permission.

4.2 The Council will receive a financial consideration for the varying of the covenant in the sum of £12,045 which will benefit the Housing Revenue Account (HRA).

5.0 **IMPLICATIONS**

5.1 **Constitution & Legal**

5.1.1 Advice has been sought from Legal Services Lincolnshire about this request because restrictive covenants can be complex. Legal Services Lincolnshire have advised that, in this case, there is a loss of amenity to neighbouring land retained by the Council, and that this affects the value of that retained land. Consequently, the Council is able to seek a financial consideration for the varying of the covenant in this case.

5.2 **Contracts**

5.2.1 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.

5.3 **Financial**

5.3.1 The applicant will be required to pay a consideration of £12,045 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.

5.4 **Reputation**

5.4.1 The recommendations in 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.

5.5 **Risk Management**

5.5.1 The recommendations in 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.

5.6 **Stakeholders / Consultation / Timescales**

5.6.1 Consultation has been carried out with ward members, the Portfolio Holder, the Leader and relevant officers. One comment was received and this is explained further in 1.6.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 This report and its recommendations affect the Long Sutton ward only.

7.0 **ACRONYMS**

7.1 HRA – Housing Revenue Account

Background papers:- None

Lead Contact Officer

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Email: rscorthorne@sholland.gov.uk

Key Decision: No

Exempt Decision: No

This report refers to a Discretionary Service

Appendices attached to this report:

Appendix A – Location Plan

Appendix A – Location Plan

