

**THE EXECUTIVE**

**27 JANUARY 2004**

**REPORT OF THE DIRECTOR OF HOUSING AND HEALTH**

<b>61 KEIR HARDIE WAY - UPLIFT OF RESTRICTIVE COVENANT</b>	<b>FOR DECISION</b>	
<p><i>This report sets out for decision a request for removing a restrictive covenant at 61 Keir Hardie Way.</i></p> <p><b><u>Summary</u></b></p> <p>A planning application has been made by a development consultant to develop a site that currently consists of a single house into a small block of flats. Although planning consent has been granted a restrictive covenant exists that prevents the contractor from proceeding. In order to proceed with this development the council needs to uplift or remove this restrictive covenant. It is not a decision that would be made within the planning process.</p> <p>The authority to make this decision rests with the Executive alone.</p> <p><b><u>Recommendation / Reason</u></b></p> <p>The Executive is asked to agree to the removal of the restrictive covenant at 61 Keir Hardie Way, in order for the named developer to undertake a project compatible with one of the council's Community Priorities.</p>		
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**1. Background**

- 1.1 Barking and Dagenham council include within the freeholds of properties sold under the Right to Buy a restrictive covenant that restricts use of the site to single occupation, (**covenant 4 iii**).
- 1.2 An application has been made by a property and land consultant, Alistair Stuart (Cranbrook) Ltd to replace an existing single residential property with a building comprising 12 residential units. This consists of 11 x 1 bedroom units and 1 x 2 bedroom units.

**2. Planning Application Process**

- 2.1. An outline planning application was submitted to Barking and Dagenham council by Alistair Stuart (Cranbrook) seeking consent to change a single residential property into a building comprising 12 residential units.

- 2.2. This application was made over in the summer of 2003 by the development consultant.
- 2.3. As part of the process of application for planning consent the development consultant contacted the Housing Strategy section. It was agreed as a consequence that 35% or 4 of the units would be allocated to key workers.
- 2.4. The application fits in with one of the Council's Community Priorities, 'Improving health, housing and social care'. In this respect the application has already been given the implicit support of the Housing Strategy section.
- 2.5. The planning application matter was heard at the Development Control Board meeting of 4<sup>th</sup> November 2003.
- 2.6. An initial decision on the project was deferred until an on-site meeting took place. This on-site meeting occurred on 10<sup>th</sup> December 2003 and the Development Control Panel has subsequently agreed that the scheme for 61 Keir Hardie should go ahead.

### **3. Restrictive Covenant - Implications**

- 3.1. In practice the development application has therefore overcome the hurdle of the planning system.
- 3.2. The issue of the restrictive covenant lies outside of the planning system. The covenant will lie in the deeds relating to the property and "run with the land".
- 3.3. In practice the development consultant are asking that the council uplift the covenant, (i.e. remove it from the land), so that it cannot be enforced in future.
- 3.4. A very brief review of Land Tribunal decisions on lifting covenants indicates that appeals to maintain covenants on land are more likely to be upheld when strong objection exists about a proposed scheme and its possible disbenefit.
- 3.5. Other than concerns about the increase in volume of traffic no objections were made to the design of the property itself. This is reflected in the notes of the Development Control Panel.
- 3.6. Previously, when approving the lifting of covenants it was possible for the Council to seek to gain financial benefit from this process as lifting the Covenant increases the value of the land. However, a legal precedent has been set which now prevent local authorities from achieving any financial benefit. The Chief Executive has asked officers to consider raising this matter with Government in order that benefit can be achieved on uplift of covenants.
- 3.7. On this basis it would seem reasonable to allow the uplift of the restrictive covenant.

### **Background Papers used in the preparation of this report**

Development Control Board Report - 4 November 2003.

Development Control Visiting Panel - Wednesday 10 December 2003.