

Full Council

Date:	18 June 2019
Title:	Land Covenant
Contact Officer:	Graham Hunt, Town Clerk

Purpose of Report

1. To provide background for a decision as to whether to remove or enforce a land covenant.

Background

2. In July 2008 (after an initial agreement in early 2007), the Town Council transferred a small piece of land (16sqm) at nil consideration to enable a resident to extend their home for their newly disabled son. On legal advice, a covenant was added to the transfer stating that the transferee would have to pay the Town Council £6,000 (subject to RPI so now just under £8,000) when the property was first sold. The transferee has notified the Town Council of their intention to sell and has asked how much they owe.
3. Letters to the resident at the time initially stated that the Town Council wanted to transfer the land free of charge, subject to legal costs only, but then following the legal advice, the Town Council back tracked and added the covenant. None of the actual resolutions record that free of charge offer; they were all subject to further legal advice.
4. The Town Clerk has sought new legal advice, which is that the Town Council do not have to enforce the covenant, though would have to have good reason not to do so.
5. The Town Clerk suspects that the legal advice in 2007 was incorrect. It would have been valid up until 2003, but at that point, the requirement to achieve “best consideration” on local authority land disposal was qualified, in that local authorities could from that point dispose of land for up to £2m less than best consideration if the disposal would contribute to the promotion or improvement of the economic, social or environmental well-being of its area. The Town Clerk’s view is that the land disposal falls into the social well-being category, helping to ensure the inclusion of all.
6. The piece of land was insignificant in terms of its use to the community. There has been no negative impact on community provision through its disposal.
7. Because of the existence of the covenant, the land is still an asset of the Town Council. There is an argument that the Town Council should maximise all of its assets.
8. Many such “claw-back” covenants have a clause such that they reduce, rather than increase over time.
9. The family have appreciated all the help and support that they have received over the years from the community of Thame in helping to alleviate their significant increase in costs and time spent in providing for the needs of their disabled son. They are investigating the possibility of moving closer to their wider family, which will enable further care and support, while also incurring further cost in finding the right facilities.

Resource Appraisal

10. Not enforcing / removing the covenant would deny the opportunity of an increase of £8,000 to the Council's £1.75m Capital Reserve.
11. Some time resource may be needed to request the Land Registry to remove the covenant, but it will lapse anyway on the first sale.

Risk Assessment

12. Thame Town Council could be subject to legal challenges from others who do not agree with the social-wellbeing argument.

Legal Powers

13. Local Government Act 1972 s127 and Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003

Recommendation:

- i) It is recommended that Council resolves not to enforce the "First Disposal" covenant on the Land Registry Transfer dated 7 July 2008*