Broomhaugh & Riding Parish Council
Covenants Policy 2024

Please note this policy document has recently been updated: The Council has reviewed its policy with effect from April 2024, to take account of current legal and market practice in dealing with requests for releases of restrictive covenants since the previous version of the policy was developed in 2009.

Historical Context

Broomhaugh and Riding Parish Council is the successor covenantee of covenants affecting many properties in Riding Mill, as a result of a conveyance in 1973 whereby the original covenantee, Riding Mill Estates Company, conveyed the benefit of those covenants to the Parish Council.

Attempts have been made over the years to clarify the Council's position in relation to consenting to development or releasing these covenants, as it has been claimed that there may have been inconsistency in the Council's actions, resulting in uncertainty for those whose properties are subject to the covenants.

In 2005, a letter setting out the Council's policy was sent to those whose properties the Council thought might be subject to covenants, but the way in which the Council has implemented that policy has been challenged by members of the Parish involving a referral to the Audit Commission. The District Auditor who handled the matter stated that the Council had not done anything illegal in its actions in requiring payment for release of covenants. However he recommended that the Council take legal advice on various points he raised, and this the Council has now done.

The Council's Legal Advice

The letter of advice to the Council is available on the Council's website and copies are available from the Parish Clerk (at a nominal cost to cover copying). The salient points are (briefly):

1 The benefit of the covenants is an interest in land, and the Council by statute may not without Secretary of State's consent dispose of any interest in land for less than the best consideration reasonably obtainable.

2 In any event, the Council has a fiduciary legal duty to the Parish, as a result of which it should, in any disposal of its assets or equivalent transaction, seek to realise the full value of those assets for the benefit of the Parish, unless other material considerations, which have been properly weighed in the balance with the Council's fiduciary duty, indicate otherwise.

3 Such "other material considerations" may emerge from consideration of the circumstances of an individual case, but as a matter of general policy there appears to be nothing to indicate that the Council should do otherwise than seek to charge full value for a release, in circumstances where the covenant has more than a merely nominal value.

4 Where the Council would demonstrably have little or no hope of success in any action to enforce a covenant, it should probably not seek to charge for a release.

5 In all other cases the Council should generally seek to realise the benefit of releasing a covenant, unless other material considerations connected with an individual case indicate otherwise.

6 Any moneys received by the Council for the release of a covenant are not earmarked for any particular purpose and are available for any lawful purpose of the Council.

Comment

It appears to be generally accepted that there are at least two building schemes involved in the original development affected. As a result, the restrictive covenants may be enforced not only by the Council as covenantee but also between the owners of the properties subject to the covenants.

Because the Council does not have copies of all the conveyances to the various residents, and as it appears that the wording of some of the covenants varies from property to property it is not possible for the Council to give a definite ruling on its

attitude to future release of covenants. In any case the Council must make a decision on the merits of each application whether to release the relevant covenant, or consent to development pursuant to it, or decline to do so. Subject to that, the Council wishes to give residents guidance about its likely response to such applications to enable them to make plans.

The Council considers that the original purpose of the covenants, in so far as that purpose can be assumed to be known and is still relevant, was to protect the covenantee's property in the relevant building scheme and also to enable neighbours (fellow covenantors) to prevent plot splitting, new build and extensions any of which they considered would impact adversely upon their own property.

The Council's Policy

1 EXTENSIONS

In the case of normal extensions for the houseowner's own use, the Council will not generally withhold its consent to development but will require a copy of the plans and specifications to be lodged with the Council. (The purpose of this is (a) to enable the Council to be satisfied that the extension proposed is a normal one and not a substantial one equivalent to a partial new build and (b) as a correct record of the extension). The Council will need to know the exact terms of the covenant applicable to that property.

(A) Covenants requiring consent only

Where the wording of the relevant restrictive covenant allows for written consent to be given (such that a formal deed of release and variation of covenant is not required) the Council will provide a letter of consent to the particular development (strictly in accordance with the plans and specifications provided) provided that:

(i) any necessary planning approval has been obtained and
(ii) no neighbour has sought to enforce the covenant.

If a letter from the Council is sought before a planning application is made, in order to give the property owner the necessary assurance to make a planning application, then upon receipt of the plans and specifications, and the Council being satisfied as to the nature of the extension as outlined above, the Council will be prepared to confirm in writing its willingness to give a letter of consent once conditions (i) and (ii) above are met.

(B) Covenants necessitating releases / variations by deed

Where the wording of the relevant restrictive covenant does not allow for the terms of the covenant to be satisfied by the provision of consent and the houseowner approaches the Council for a release of the covenant, a deed of partial release and variation of covenant in respect of a specified normal extension will, where requested, usually be given, provided:

(i) any legal fees are paid by the houseowner;
(ii) no neighbour has sought to enforce the covenant;
(iii) the covenant will only be released and varied to the minimum extent required to permit the proposed extension in accordance with the plans and specifications supplied; and
(iv) the Council will only release and vary the covenant insofar as the benefit of the covenant vests in the Council (i.e., to the extent that neighbouring houseowners benefit from the same covenant, separate releases would need to be sought from those neighbours by the party seeking the release and variation).

In circumstances where a neighbour objects to a proposed extension (whether through the planning process or to the Council directly) but without supplying any clear written justification for such objection, the Council reserves the right to provide a letter of consent or a deed of partial release and variation (as the case may be) in respect of the relevant covenant. This approach is intended to assist the Council in the balancing of competing neighbours' interests, so that houseowners are not prevented from building normal and reasonably-sized extensions as a consequence of objections from neighbours which may, on an objective basis, be without merit. On the other hand, given the potentially more significant impact on

neighbouring properties of a property "split", as opposed to a normal extension, the Council's position in respect of objections and enforcement action arising in relation to property splits and other developments will be as set out in paragraph 2.

A reasonable fee to cover administrative costs may be charged by the Council in the case of the approach under either (A) or (B) above.

2 PROPERTY SPLITS AND OTHER DEVELOPMENTS

The Council in accordance with the letter of legal advice received will, in the case of property splits, give precedence to its fiduciary duty to the Parish and will not grant a release or consent other than for value. In the balance to be held between realising the value of the benefit of the covenant and respecting the rights of the neighbours, the Council will generally give preference to the neighbours' rights – i.e. if any neighbour chooses to enforce the restrictive covenant, the Council will not assist the covenantor by varying or releasing the covenant, waiving it or in any way consenting to the development, even though the Council would thereby forego an opportunity to make a charge for such matters.

If a neighbour, having objected to the planning application, notifies the Council in writing of intention to seek to enforce a covenant should planning permission be granted and acts on that notification within a month of the grant, the Council will not release the covenant.

The Council will not release a covenant prior to the grant of the relevant planning permission.

3 BUSINESS RUN FROM HOME

In the case of a covenant restricting trade, business, manufacture or calling of any description on the premises, the Council is not inclined to enforce this covenant in respect to activities which do not cause disturbance to neighbours. This does not obviate the need for a property owner to obtain any planning approvals or other permissions that may be required in appropriate cases. Nor is it intended to affect the rights of neighbours to enforce the covenant under any building

scheme. In addition, this paragraph shall not operate as a waiver of any relevant restrictive covenants which may exist and the Council reserves its right to enforce any covenants of which it has the benefit on a case by case basis.

4 CHANGE OF USE

Where a house owner wishes to change the permitted use of a property in breach of covenant the Council may elect partially to release or vary the covenant in respect of that change (as applicable) and may make a market value charge for doing so. If the amount of such charge as ascertained by valuation is negligible the council may if requested by the covenantor enter into a formal deed of partial release and variation at the expense of the covenantor (but no other charge will be made). The Council reserves its right to make a substantial charge if the covenantor does not apply for such release at the time of change. Again, the covenant will only be released and varied to the minimum extent required to permit the agreed change of use, but not further or otherwise.

The Council will give preference to neighbours' rights and the provisions of paragraph 2 above will apply to applications for change of use

5 VALUATION

Where the Council has been asked (under paragraph 2 above) to release a covenant to enable a house owner to proceed with a sale or development of their property or part of their property, the amount charged by the Council for such release will be based on the figure assessed by the Valuation Office Agency, or Independent CAAV qualified Valuer, as appropriate. The Council may modify this figure in negotiation with the house owner to reflect individual circumstances. The amount charged will be based on a percentage of the valuation of the land without the restriction of the covenant less the value of the land with the restriction. This valuation will in effect reflect the value to the covenantor of the Council's release of the covenant without the expense and uncertainty of outcome of recourse to the Lands Tribunal. Among other factors which the Council will take into account in such negotiations will be the need for consistency in the amounts charged by the Council for the release of covenants on other properties in the village.

6 ENFORCEMENT

To comply with its fiduciary duty as outlined above, the Council may have obligations to take such steps as may be required to avoid any inadvertent waiver of covenants and the loss of assets of value to the Parish. The Council encourages consultation from house owners at an early stage when development of any kind is proposed; however, should circumstances arise in which the Council becomes aware that a house owner has undertaken (or proposes to undertake) development without such consultation, the Council may:

(i) write to the house owner, informing them of the breach (or potential breach) of covenant and seek to resolve the matter through correspondence and negotiation; and

(ii) take appropriate legal advice in respect of the breach of the relevant covenant, which may include advice on the remedies available to the Council through the courts to secure compliance with the covenants.

7 INDIVIDUAL CIRCUMSTANCES

The above is intended as a statement of general policy. Whilst as noted above the policy is intended to give houseowners guidance about the Council's likely response to applications under the covenants, the Council will consider each application on its merits, having regard to the general policy and other material considerations. In any individual case where the Council appears to the applicant to depart from its general policy, the Council will notify the applicant in writing of the reasons for such apparent departure.

SUMMARY

There are no fundamental changes from the policy established in 2005 (as amended in 2009) which was sent to covenant holders (also after legal advice was taken).

The policy remains in the public domain, following the legal advice of August 2009 as recommended in the District Auditor's report, for all parishioners to see. The

Council is also putting the letter of legal advice into the public domain. Any individual application for covenant release will continue to be considered by the Council in confidence as far as possible, but each applicant will be able to check that the outcome of their application is consistent with the published policy and legal advice.

Any income or expenditure related to covenants will be reported at the same time as the annual audit, whilst preserving as far as possible the financial privacy of the individual.

April 2024