

Broomhaugh & Riding Parish Council

Covenants Policy 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  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.  The  Council  will  provide  a  letter  of  consent  to  the  particular  development  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  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.

A  deed  of  release  of  covenant  in  respect  of  a  specified normal  extension  will,  where  requested,  usually  be  given  provided  any  legal  fees  are  paid  by  the  houseowner and  again  provided  no  neighbour has  sought  to  enforce  the  covenant.

A  small  fee  to  cover  administrative  costs  may be  charged  by  the  Council  in  either case.

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  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  release.

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.

4   CHANGE OF USE

Where  a  house  owner  wishes  to  change  the  permitted  use  of a property  in  breach  of  covenant  the  Council  may  release  the  covenant  in  respect  of  that  change  and  may  make a 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  release  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.

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

5   VALUATION

Where  the  Council  has  been  asked  (under  2  above)  to  release  a  covenant  to  enable  a  house  owner  to  proceed  with  a  sale  or  development  of  his  property  or  part  of  his  property,  the  amount  charged  by  the    Council  for  such  release  will  be  based  on  the figure  assessed  by  the  Valuation  Office  Agency 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   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  which  was

sent  to  covenant  holders  (also  after  legal  advice  was  taken).

This time  the  policy  is  put  into  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  his  or  her  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.

June 2010