

Eden District Council

Executive

20 July 2021

**Unit 1, Gillan Way, Penrith – Relaxation of Covenants**

<b>Portfolio:</b>	Resources Portfolio
<b>Report from:</b>	Assistant Director Legal and Democratic Services
<b>Wards:</b>	Penrith West
<b>OPEN PUBLIC ITEM</b>	

**1 Purpose**

- 1.1 To consider the relaxation or release of a restrictive covenant upon a business premises at Unit 1, Gillan Way, Penrith.

**2 Recommendation**

It is recommended that the restrictive covenant is relaxed to permit the use of the premises as an Ophthalmic Clinic (formerly Use Class D1, now Use Class E(e)).

**3 Report Details**

**Explanatory Section - Use Classes**

- 3.1 On 1 September 2020, The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force. These Regulations implemented changes to the Use Classes.
- 3.2 For ease, together with consistency with the covenant wording, the previous Use Classes have been used within the body of this Report, accompanied by the 'new' Use Classes in brackets.
- 3.3 Appendix 2 contains both the previous and new Use Classes of the occupied premises on the business park, together with including the sought Use Class of Unit 1 for reference purposes.

**The Request**

- 3.4 The Council previously owned land off Haweswater Road known as Land at Penrith 40 Business Park. One parcel of the site was transferred on 16 January 2008. Part of this parcel is now known as Unit 1, Gillan Way, Penrith and is shown edged red of the plan at Appendix 1.
- 3.5 At the time of transfer in 2008, a restrictive covenant was imposed for the benefit of the land retained by the Council stating that the owner:

*“Shall not use the Property other than for uses permitted under Class B1 of the Town and Country Planning (Use Classes) Order 1987 as may from time to time be extended by statute)”*

- 3.6 Class B1 (now Use Class E(g)(i – iii)), comprises of:
- a) Offices other than use within Use Class A2 (now Use Class E(c)(i));
  - b) Research and development of products or processes;
  - c) For any light industrial process (which can be carried out in any residential areas without causing detriment to the amenity of the area).
- 3.7 The majority of the rest of the land comprised in the title of the ‘retained’ land has been sold. The Council now only owns two small parcels of land within the original site, as shown coloured blue of the said plan.
- 3.8 The Council has received a request to relax the restrictive covenant for the benefit of a new subtenant of Unit 1, Gillan Way.
- 3.9 The current leasehold owner has granted a 5 year sublease to the new subtenant who wishes to use the property to operate an Ophthalmic Clinic under Use Class D1 (now E(e)).
- 3.10 Planning Permission for the relevant change of use has not yet been applied for however the new subtenant is aware of the need to apply for a change of use.
- 3.11 In considering any relaxation or removal, the restrictive covenant was imposed for the benefit of the retained land. As such, the question to consider is, will the retained land be adversely affected by relaxation or removal of the covenant? The courts will only permit enforcement for a breach of covenant if such an adverse effect was present or would be likely to occur.
- 3.12 It is envisaged that little or no adverse effect will be suffered by the Council’s retained land.
- 3.13 Appendix 2 attached identifies the businesses in occupation at the business park. This schedule has been created based upon local knowledge rather than an in-depth survey. Of 14 businesses in current occupation, five appear to be using the properties primarily within the previous Use Class B1. The nature of the current request is not inconsistent with a number of the existing uses. In particular, Ghyllmount (a dental practice) is of the same Use Class sought by the new subtenant being D1 (now Use Class E(e)). Veterinary Vision (whilst operating under the Sui Generis Use Class) is a veterinary ophthalmic clinic having previously obtained a relaxation from the Executive Committee in 2016.

### **Ownership Clarification**

- 3.14 Freehold ownership grants “title absolute” to the owner, meaning they own the building and land outright, in perpetuity. In contrast, leasehold ownership means that a lease has been granted allowing for use of the property for a specified number of years.
- 3.15 In this case, the freehold owner of the land granted a long-term lease to the current leaseholder. The leaseholder has granted a short-term sublease to the new subtenant.

- 3.16 The applicable covenant is contained within the transfer of the freehold title from the Council. Whilst the request received is for the benefit of the new subtenant, any relaxation or removal of the covenant would require a relevant deed to be entered into between the Council and the freehold owner of the title. The freehold owner has confirmed their agreement to any such relaxation or release.

## **4 Policy Framework**

- 4.1 The Council has four corporate priorities which are:

- Sustainable;
- Healthy, safe and secure;
- Connected; and
- Creative

- 4.2 This report meets the Sustainable and Healthy, Safe and Secure priorities.

## **5 Consultation**

- 5.1 The required consultation has been undertaken in respect of this report.

## **6 Implications**

### **6.1 Financial and Resources**

- 6.1.1 Any decision to reduce or increase resources or alternatively increase income must be made within the context of the Council's stated priorities, as set out in its Council Plan 2019-2023 as agreed at Council on 7 November 2019.

There are no proposals in this report that would reduce or increase resources.

### **6.2 Legal**

- 6.2.1 The Council can impose and enforce the restrictions on the use of the land which arises from the land transfers. In effect, the Council can prevent any use of land that breaches the restrictions and seek either an injunction or damages for the breach. However, the land was acquired and developed for economic development purposes and the principal intentions of the Council would be to secure the appropriate development of the land and the Business Park.

It is possible for the Council to release a restrictive covenant formally by deed. The release could specify a limited approval or be general, although it is considered that should a release be made it should be specific and limited.

### **6.3 Human Resources**

- 6.3.1 There are no Human Resources implications arising out of the proposal.

## 6.4 Statutory Considerations

<b>Consideration:</b>	<b>Details of any implications and proposed measures to address:</b>
Equality and Diversity	There are no adverse implications arising from this report under this heading.
Health, Social Environmental and Economic Impact	There are no adverse implications arising from this report under this heading. The release of the covenant will have a positive impact.
Crime and Disorder	There are no adverse implications arising from this report under this heading.
Children and Safeguarding	There are no adverse implications arising from this report under this heading.

## 6.5 Risk Management

<b>Risk</b>	<b>Consequence</b>	<b>Controls Required</b>
Inappropriate development and/or use of the business park.	Reduction in general desirability and security of economic development	a) Appropriate consideration of the relaxation / release of restrictions; b) Specific and limited relaxation/release of restrictions.
Reputational	There is a potential for misconceptions of inconsistency between this decision and previous decisions relating to the relaxation of covenants on neighbouring land.	Clear reasons should be recorded if the request is refused.

## 7 Other Options Considered

- 7.1 Consideration has been given to removing the restrictive covenant however, in line with the Risk Management section above, this option was rejected in favour of a specific and limited relaxation in order to protect the development and/or use of the business park.

## **8 Reasons for the Decision/Recommendation**

8.1 The reasons for the recommendation are that:

- a) it would appear to have little or no adverse impact on such retained land that we still own; and;
- b) is a use not inconsistent with other uses in the vicinity, including one property utilising the same Use Class; and
- c) a previous and similar request was approved by Executive in 2016, enabling a neighbouring property to be used as a veterinary ophthalmic clinic (Class Use Sui Generis, unchanged in the Regulations), accompanied by planning approval from the Council.

### **Background Papers:**

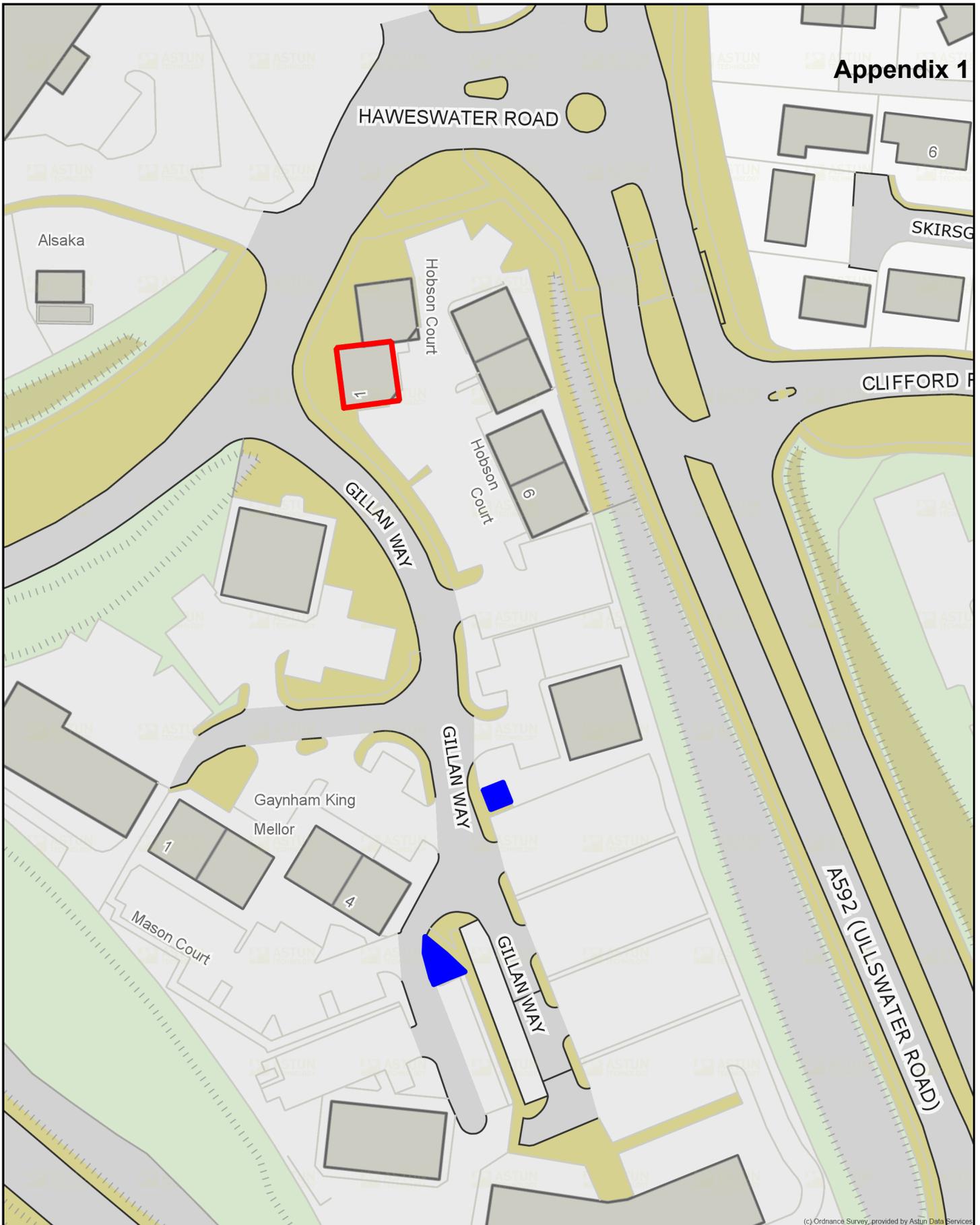
#### **Appendices:**

**Appendix 1 – Location Plan**

**Appendix 2 – Property Use on Gillan Way, Penrith**

#### **Contact Officer:**

**Lisa Tremble, Assistant Director Legal and Democratic Services**



(c) Ordnance Survey, provided by Astun Data Services

**Unit 1, Gillan**  **Eden**  
District Council

 N Scale: 1:1000

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## Appendix 2

### Businesses on Gillan Way, Penrith

<b>Business</b>	<b>Nature of Business</b>	<b>Class Use (former)</b>	<b>Class Use (new)</b>
NFU Mutual	Insurance Services	A2	E(c)(ii)
David Allen	Accountants	A2	E(c)(ii)
Ghyllmount	Dental Practice	D1	E(e)
A Chance for Life	Complex Case Management and Rehabilitation	B1	E(g)(i)
Burnetts	Solicitors Practice	A2	E(c)(ii)
Inspira	Social enterprise providing community and youth services	B1	E(g)(i)
Cumbrian Homes	Property Developer	B1	E(g)(i)
Kiddlywinks Day Nursery	Day Nursery	D1	E(f)
Veterinary Vision	Veterinary Practice	Sui Generis	Sui Generis
Brewin Dolphin	Stockbroker	A2	E(c)(ii)
Gaynham King & Mellor	Solicitors Practice	A2	E(c)(ii)
Saint & Co	Accountants	A2	E(c)(ii)
Atlantic Geomatics	Surveying Consultancy	B1	E(g)(i)
Handlesbanken		B1	E(g)(i)
Unit 1, Gillan Way	Ophthalmic Clinic	D1	E(e)