

CHESHIRE EAST COUNCIL

REPORT TO: PORTFOLIO HOLDER FOR PROSPERITY & ECONOMIC REGENERATION

Date of meeting: 29th May 2013

Report of: Property Portfolio Manager

Subject/Title: Bollington Leisure Centre – Rent for Ground Lease

Decision Taking Officer: Cllr Jamie Macrae, Portfolio Holder for Prosperity & Economic Regeneration.

1.0 Report Summary

- 1.1 The land the subject of this report is owned by Cheshire East Council ("CEC") and currently leased via three separate ground leases to the Trustees of Bollington Leisure Centre ("TBLC"). The TBLC have constructed a building and car park on the land and operate it as a Leisure Centre which provides sports facilities including a swimming pool, squash courts, fitness suite, health spa and soft play area.
- 1.2 The land has been leased to the TBLC for approximately 36 years. The Council has agreed terms for a new lease (which encompasses all of the land let to the TBLC under the 3 existing leases), the surrender of the 3 existing leases contemporaneously with the completion of the new lease and a supplemental agreement between CEC, the TBLC and Competition Line (UK) Limited which relates to the Sports Centre Development Agreement between the TBLC and Competition Line (UK) Limited.
- 1.3 The new lease provides that the Council can terminate the lease (after consulting with the TBLC) if the Trust is dissolved, it changes its objects within its constitution or it ceases operation of any one or more of the facilities listed in paragraph 1.1 above. The use of the land is limited to the purposes of a leisure centre (including the facilities listed at paragraph 1.1) and associated offices, outbuildings and car parking. The land cannot be used exclusively or predominantly for the purposes of a private club without the Council's consent and there is a requirement that the land and the facilities are available for such public use as shall be agreed between the Council and the TBLC. The new lease cannot be assigned or sublet; however, assignment on a change of trustees is permitted.
- 1.4 The purpose of this report is to provide two options to the Portfolio Holder with regards to determining the rent payable in connection with the new Ground Lease between CEC and the TBLC and also to request authority for the new lease to terminate on the same date as the TBLC's agreement with Competition Line in respect of development

works to their building and the provision of supply and equipment to the TBLC.

- 1.5 Further information regarding the options set out above is outlined in the remainder of this report.

2.0 Decision requested

- 2.1 That the Portfolio Holder makes a decision with regard to the level of rent payable in connection with the Ground Lease between CEC and the TBLC based on options 1 and 2 as referred to below:

- Option 1 – For CEC to receive the full market rent which equates to £2695/annum (subject to review every 7 years), for the Ground Lease of Bollington Leisure Centre, the car park and the surrounding land also leased to TBLC
- Option 2 – For CEC to receive a nominal rent of £200/annum (subject to review every 7 years), for the Ground Lease of Bollington Leisure Centre, the car park and the surrounding land also leased to TBLC.

- 2.2 That the Portfolio Holder makes a decision that the lease term expires in 2033 rather than the current proposed expiry date which is 30th April 2032.

3.0 Reasons for Recommendations

- 3.1 To ensure that the new lease runs parallel with TBLC's agreement with Competition Line which will allow the 2 agreements to expire simultaneously.
- 3.2 To provide the Portfolio Holder with the necessary information to make a decision about the level of rent payable by the tenant in relation to the new lease.
- 3.3 The background to the current lease and the TBLC's position is set out in section 10 of this report.

4.0 Wards Affected

- 4.1 Bollington

5.0 Local Ward Members

- 5.1 Cllr Peter Hayes
Cllr Bill Livesley

6.0 Policy Implications including - Carbon reduction - Health

6.1 There are no perceived policy implications regarding this transaction.

7.0 Financial Implications

7.1 Finance has checked the relevant financial system from Macclesfield Borough Council and there is no evidence of a grant payment to Bollington Leisure Centre since 2002, which is the earliest date that we hold records from.

8.0 Legal Implications

Offering a lease of the land to the TBLC at the full market rental value has no specific legal implications.

The offer of the new lease to the TBLC at a reduced rent does have legal implications as set out below.

The Local Government Act 1972, section 123 allows the Council to dispose of its land provided that it obtains the best consideration reasonably obtainable unless there is Secretary of State's consent to the disposal at undervalue. In this case the best consideration requirement would not be met.

By virtue of the Local Government Act 1972: General Disposal Consent (England) 2003 the Secretary of State gave a general consent to local authorities to dispose of land if the difference between the unrestricted value of the land and the consideration for the disposal does not exceed £2 million and where the purpose for which the land is being disposed of is likely to contribute towards the achievement of the promotion or improvement of one or more of the following; economic well-being, social well-being and/or environmental well-being; in respect of the whole or any part of its area or of all or any persons resident or present in its area.

In this particular case the TBLC would, by the nature of the lease being granted and the covenants contained within it, be providing and running a leisure centre to the community in the immediate surrounding areas. This is a service which is largely provided by the Council throughout the Borough and therefore the grant of the new lease at less than best consideration, on the face of it, appears to satisfy, at least, the social well-being requirement. The Council could therefore reasonably justify the disposal on these grounds.

The other consideration in terms of s123 LGA 1972 is whether or not the land is public open space ("POS"). Part of the land the subject of the new lease is classed as POS and therefore does need to be advertised prior to the disposal (by way of the grant of the new lease)

being made. Therefore the disposal must be advertised for a period of two consecutive weeks in the local press, after which time the public will be allowed 14 days to make representations and any objections and/or representations that are received during the 14 day period must be considered by the Portfolio Holder for Prosperity and Economic Regeneration before the final decision is made as to whether or not to dispose of the land.

In terms of State Aid implications, the grant of the new lease for less than best consideration would constitute aid to the TBLC. The TBLC have confirmed that other than a 20% reduction on business rates, TBLC has not received and does not receive any other aid. The amounts concerned are well below the EUR 200,000 “de minimis” threshold below which (by European block exemption Regulation) State aid to any one undertaking or group is considered too small to distort competition and is thus deemed authorised.

9.0 Risk Management

- 9.1 The risk to the Council is that if it proceeds with the option to grant a Ground Lease at less than best consideration it could be challenged as to whether the grant of lease satisfies the “well being” powers which the Council would rely on in order to proceed in this manner (as set out in paragraph 8 above).

10.0 Background and Options

- 10.1 CEC was approached by the TBLC to surrender the existing ground leases and simultaneously re-grant a new ground lease to the TBLC to include the Leisure Centre, car park and its surrounding areas.
- 10.2 The TBLC have requested the above to formalise the arrangements so that the TBLC will have one Lease from CEC rather than three separate agreements.
- 10.3 A Portfolio Holders decision has already been obtained with regard to obtaining consent to surrender the previous lease and to re-grant the new ground lease (see Appendix A) but completion of the new Lease, Surrender Agreement and Supplemental Agreement has stalled because the TBLC has recognised that the new Lease reflects the full level of rent payable and the TBLC have stated that they cannot afford to pay this.
- 10.4 The new Lease, which has been substantially agreed between the parties (subject to rent), is an FRI lease; there is no liability on the Council to pay for any outgoings, services, insurance for the site etc. These all fall within the Tenant’s covenants in the new Lease.
- 10.5 The new Lease refers to a rental payment of £2,695.00 per annum, the Lease is due to terminate on 30th April 2032 and there is a rent review

due on 1st May 2018 and 1st May 2025. The TBLC have confirmed that they can continue to pay £200.00 per annum towards the rent (which is in line with what they are currently paying).

- 10.6 The TBLC have confirmed (and have provided copies of Minutes and previous rent invoices in support of their position) that the Council (Macclesfield Borough Council prior to 2009) has previously awarded a grant to the TBLC which has substantially covered the rental payment due to the Council for the property, the TBLC have therefore only had to pay £1.25 per quarter (in respect of the Leisure Centre only). This arrangement is not reflected in the terms of the current Lease nor the heads of terms agreed in respect of the new lease. The full level of the rent under the previous lease has not been demanded by the Council since 1st April 2009.
- 10.7 Leisure Services have confirmed that they believe the grant would have been a one off amount payable from Macclesfield Borough Council's Grants panel. It would appear that the former local authority would have agreed to the initial rent of £5 plus the grant in order to support a local community leisure trust in getting up and running whilst also providing a valued local facility. Leisure Services have also confirmed that this Leisure Centre continues to be a key facility in the town as the major leisure asset delivering community and improved health outcomes.
- 10.8 Assets have investigated the history of the grant referred to in paragraph 10.6 above with the Assets and Leisure Services departments and former officers from Macclesfield Borough Council. Unfortunately it has not been possible to trace where the grant came from and in particular which budget it came from. Further enquiries have been made as to whether a grant is still available for this purpose, however, Finance have confirmed that the previously awarded grant is not currently available and as any such grant will not be guaranteed for the term of the new lease the TBLC cannot rely on this for payment of the full rent due for the term of the new lease. This option for payment of the bulk of the rent has been discounted as not suitable in these circumstances.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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