

REPORT TO PORTFOLIO HOLDER FOR REGENERATION - COUNCILLOR DON STOCKTON

Report of:	Joanne Jones, Property Services Manager
Subject/Title:	Lease of land at Arclid Wood, off Davenport Lane, Arclid, Sandbach to Cornerstone Telecommunication Infrastructure Limited.
Date of meeting:	19 th September 2016
Portfolio Holder:	Portfolio Holder for Regeneration Councillor Don Stockton.

1.0 Report Summary

To formalise the telecommunications lease arrangements for two aerial masts owned by Vodafone Ltd and situated on Council owned land at Arclid Wood, Arclid, Sandbach which houses the Arclid Household Waste Recycling Centre and a vacant former Council Depot. They are subject to two Leases from the Council to Vodafone. The leases expired in 2010 and the Council served a section 25 notice pursuant to Part 2 of The Landlord and Tenant Act 1954 ("the Act") on Vodafone in 2010 requesting the grant of a new lease of the site to Vodafone on terms and conditions in accordance with the existing leases but with the level of rent payable, the term and rent reviews to be agreed between the parties.

2.0 Decision requested

That the Council enters into a new 15 year lease agreement with CTIL (Vodafone and Telefonica joint venture company) at the property known as land at Arclid Wood (also known as Cell Site Number 108), Arclid, Sandbach on terms and conditions to be agreed by the Head of Assets and Director of Legal Services.

3.0 Reasons for Recommendations

Vodafone currently have a protected business tenancy and rights pursuant to The Communications Code 2003 which entitle Vodafone to a new lease and continuance of occupation of the site. The offer to grant a new lease of the site to CTIL rather than a renewal of the existing lease to Vodafone presents better terms for the Council and the offer satisfies the requirements of s123 of the Local Government Act 1972.

4.0 Wards Affected

Brereton Rural

5.0 Local Ward Members

Councillor Wray

6.0 Policy Implications (e.g. Climate Change and Health)

The existing use of the site will remain.

7.0 Implications for Rural Communities

The use of the site will be unchanged.

8.0 Financial Implications

The Council will receive a higher rent for the site and has received assurances surrounding best consideration in accordance with RICS and s123 of The Local Government Act 1972 requirements.

9.0 Legal Implications (Authorised by the Director of Legal Services)

The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers, however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.

The Council has the power to dispose of the land pursuant to s123 of The Local Government Act 1972 subject to it being at the best consideration that can reasonably be obtained as has been determined in this case.

The Council has a fiduciary duty at all times to the taxpayers and must fulfil this duty in a way which is accountable to local people.

All activities must comply with the European Commission's State aid rules, the Council has confirmed that there is no aid being granted in this case.

10.0 Risk Management

Accepting the offer to settle the current proceedings and enter into a new lease with CTIL will avoid the uncertainty and cost of a Court Hearing to agree the terms for a renewal lease to Vodafone.

11.0 Background information

The Council owns a site at Arclid Wood which houses the Arclid Household Waste Recycling Centre and a vacant former Council Depot. Located on the site are two aerial masts owned by Vodafone Limited ("Vodafone") occupying an area of land and subject to two Leases from the Council to

Vodafone. The leases expired in 2010 and the Council served a section 25 notice pursuant to Part 2 of The Landlord and Tenant Act 1954 ("the Act") on Vodafone in 2010 requesting the grant of a new lease of the site to Vodafone on terms and conditions in accordance with the existing leases but with the level of rent payable, the term and rent reviews to be agreed between the parties.

Vodafone are currently 'holding over' under the provisions of the Act. They remain in possession of the land and continue to pay rent as directed by the two former leases. They are a protected business tenant.

The land housing the masts is not required in connection with the Council's waste service provisions and is not operational. The land has been leased to Vodafone for over 25 years.

To formalise the lease arrangements with Vodafone, a single lease has been agreed (subject to contract) that incorporates the provisions contained within the former agreements under a single set of terms (as was approved by the Cabinet Member for Prosperity and Economic Regeneration on 12th November 2012).

The parties have been negotiating for some time with a view to agreeing the terms for the renewal of the leases. In November 2013 Vodafone protected their position by making an application to the Court for it to decide the terms for renewal should the parties not be able to agree.

After a long period of negotiations the parties have agreed terms for a new 15 year lease of the site to be granted to Cornerstone Telecommunications Infrastructure Limited ("CTIL"). CTIL is a company created by Vodafone and Telefonica as a joint venture, and Vodafone request that all of its new leases are entered into with CTIL as the tenant.

The terms have been negotiated to reflect current market conditions and have been recommended by the Council's professional advisors and external agents specialising in telecommunications lease renewals to provide assurances with regard to best consideration.

12.0 Access to Information

Please contact the report writer for any further background information relating to this matter.

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