

Cheshire East Council

Portfolio Holder Report – Cabinet Member for Regeneration

Date of Meeting: 12th June 2017

Report of: Executive Director for Place

Subject/Title: Proposed new ground lease - Whistlestop Cafe, Market Street, Congleton

Portfolio Holder: Portfolio Holder for Regeneration – Councillor Don Stockton

1. Report Summary

- 1.1. The Whistlestop Café, Market Street, Congleton is subject to an existing ground lease, dated 9 May 2007, between Congleton Borough Council (now Cheshire East Council), (as landlord) and John and Pauline Hodson (as tenant), for a term of 10 years, expiring this year. The lease is a secure business tenancy.
- 1.2. As the lease is coming to an end, the tenant has requested a renewal of the lease, for a new 10 year term and is seeking consent to grant their sub-tenant a new 10 year (less 3 days) sub-lease, at the same time.
- 1.3. The leased area forms part of the adjacent Fairground Car Park. Negotiations to renew this ground lease and provide consent to a further sublease have been conducted on the basis of the Council being able to break the lease during the term (should the land be required for redevelopment in the future) and subject to the Council compensating the tenant if the lease is terminated early.

2. Decision requested

It is recommended that the Portfolio Holder for Regeneration:

- 2.1 Agrees to the granting of a new 10 year lease, at a rent of £3,450 (three thousand, four hundred and fifty pounds) per annum, with a rent review at year 5 of the term, and subject to a landlord only redevelopment rolling break option, subject to a fixed compensation payment of £40,000 (forty thousand pounds), on terms and conditions to be agreed by the Head of Assets and Director of Legal Services.
- 2.2 Agrees to permit the sublease of the land in accordance with the terms of the new lease.

3. Other Options Considered

- 3.1 The Council could refuse to grant a new lease and serve the necessary legal documentation to terminate the existing tenancy, subject to having the necessary legal grounds to terminate the tenancy. The tenant may choose to pursue the Council for a new lease via the courts, or for compensation as a result of the Council deciding not to renew their lease.

4. Reasons for Recommendation

- 4.1 The Council has no current use for the leased area and therefore does not need to regain possession of the land currently. The terms agreed are considered best consideration, in accordance with s123 of The Local Government Act 1972 and will allow the tenant to be granted a new lease, with the Council able to obtain vacant possession, by exercising the break clause, at the appropriate time, if required.

5. Background/Chronology

- 5.1. The property fronts Market Street and forms part of the Fairground Car Park located on the edge of Congleton Town Centre.
- 5.2. The property is subject to an existing ground lease, dated 9 May 2007 between Congleton Borough Council (now Cheshire East Council), (as landlord) and John and Pauline Hodson (as tenant), for a term of 10 years expiring this year. The existing lease and a previous lease included a redevelopment break option, subject to payment of compensation, to the tenant, for a sum equivalent to “business goodwill” and “value of the buildings”, if the Council served notice to break the lease at any time, after the tenant had invested financially in the site establishing the café business.
- 5.3. The tenant has sublet the café (land and buildings) to David Davenport and Mark Winder and the tenant obtained previous consent from Cheshire East Council in accordance with the lease for the sub letting.
- 5.4. As the lease is coming to an end, the tenant has requested to renew for a new 10 year term and seek consent to grant their sub-tenant a new 10 year sub-lease at the same time.
- 5.5. The Fairground Car Park is considered a strategic land holding by the Council and has been considered for a town centre regeneration scheme previously. Negotiations to renew this ground lease and provide consent to a further sublease have been conducted on the basis of the Council being able to break the lease during the term (should the land be required for redevelopment in the future) and subject to the Council compensating the tenant if the lease is terminated early.

- 5.6. Fixing the compensation payable gives more certainty for the Council in the event that a redevelopment scheme was to be considered and would provide clarity in negotiations with any future developers or contractors in seeking to obtain vacant possession of the site and terminating the proposed lease.
- 5.7. The lease renewal will enable the current tenants and business to continue to operate, as they currently are, for a further term subject to the more beneficial break option for the Council and a slight increase in rent, which is considered market value for the lease terms being renewed.

6. Wards Affected and Local Ward Members

Wards Affected:-

Congleton West
Congleton East

Local Ward Members:-

Cllr Paul Bates (Congleton West)
Cllr Gordon Baxendale (Congleton West)
Cllr George Hayes (Congleton West)
Cllr Geoff Baggott (Congleton East)
Cllr David Brown (Congleton East)
Cllr Glen Williams (Congleton East)

7. Implications of Recommendation

7.1. Policy Implications

- 7.2. This is in line with Council policies and decisions on obtaining best consideration for its land and property transactions.

8. Legal Implications

- 8.1 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.
- 8.2 The General Disposal Consent 2003 authorises the disposal of land for 7 years or more at less than best consideration if the undervalue is £2million or less and subject to those powers being exercised in line with public law principles.
- 8.3 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.

9. Financial Implications

- 9.1 Granting the new lease would result in the Council receiving the rent of £3,450 per annum for the duration of the term.
- 9.2 Should the break option be exercised in the event of redevelopment, compensation to the tenant would be due in the sum of £40,000, or on the statutory basis.

10 Equality Implications

- 10.1 It is not considered that the recommendations made in this report have any direct implications on equality and diversity.

11 Rural Community Implications

- 11.1 It is not considered that the recommendations made in this report have any direct implications on the Rural Community.

12 Human Resources Implications

- 12.1 Staff resources from Legal Services and Assets will be required to process the lease renewal and consent to sub-let.

13 Public Health Implications

- 13.1 It is not considered that the recommendations made in this report have any direct implications on Public Health.

14 Implications for Children and Young People

- 14.1 It is not considered that the recommendations made in this report have any direct implications for Children and Young People.

15 Other Implications (Please Specify)

- 15.1 The lease renewal will enable an existing local business to continue to trade in the town centre.

16. Risk Management

- 16.1 If the approvals requested in this report are not given then the likely outcome would be that the tenant would serve notice on the Council to commence the statutory lease renewal process prior to the end of the current term.

17 Access to Information/Bibliography

- 12.1 Please contact the report writer for any supporting information required.

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