

Key Decision Required:	Yes	In the Forward Plan:	Yes
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CABINET

13 SEPTEMBER 2012

REPORT OF FINANCE AND ASSET MANAGEMENT PORTFOLIO HOLDER

A.3 HARWICH: BARRACK LANE SUITE: POTENTIAL SURRENDER OF THE ROYAL BRITISH LEGION (HARWICH BRANCH) LEASE

(Report prepared by Andy White)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To advise Cabinet of the request by the tenant to surrender the lease of the above premises at Barrack Lane, Harwich and to provide potential options for the future of the site.

EXECUTIVE SUMMARY

The Royal British Legion (Harwich Branch) has advised that it can no longer meet its obligations under the terms of the lease because of financial difficulties. The tenant under the lease is two nominated trustees. They request that the Council agrees to the surrender of the lease without conditions so that the branch can move to alternative premises.

Theoretically the Council could refuse such terms, but there is little that can be done at a practical level to require the branch to continue. The Council's remedy would therefore be to seek financial damages against the trustees in a court action. Such a case is unlikely to be helpful to either party. It is proposed that the Council agrees to the surrender.

Once the lease is surrendered the property and the immediate responsibility for rates repairs and insurance etc will revert to the Council. This is a significant liability. The Council has a small number of options in reacting to this situation:

1. Attempt to relet the building as it stands
2. Refurbish and repair the building in order to relet it
3. Renew the building before letting it
4. Remove the building in order to add communal parking in the short term, with a view to a potential wider regeneration of the whole site in the longer term.

RECOMMENDATION(S)

- (a) That Cabinet agrees to accept the surrender of the lease on terms as set out, subject to such other terms as considered necessary by the Head of Resource Management.**
- (b) That, subject to its decision above, Cabinet considers the options set out in the report and determines its preferred option for the future of the building.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The building is one of five on the site that provide community facilities. Assets owned by the Council have roles in meeting the community and financial needs of the various parties.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The Council currently benefits from a rental income of £150 per annum, representing a market rent of £2,000 offset by the Community Assets Rent Offsetting Scheme. If the building were let after surrender there could be an income stream at these levels, depending on the nature of the tenant's eligibility for CAROS. Each of the options for repair, replacement or removal has an initial cost implication. The details of this are set out in the Options Appraisal at Appendix C.

Risk

If the Council seeks to relet the building it may be hard to attract a tenant because of the condition of the property as well as current market conditions. It may well be hard to attract a tenant at all unless the Council takes on responsibility for the outstanding works.

If the Council lets the building to a tenant on condition that the tenant is responsible for outstanding and ongoing repairs there is a significant risk that the tenant will not be able to meet these obligations.

LEGAL

The Council can use its discretion to agree to a surrender, but it does not have to do so. However, there is no power available to the Council that can prevent the tenant handing back the keys to the property. If this happened the Council's only recourse would be to try to enforce the lease by seeking a court decision. It is most unlikely that a court would give an order requiring the tenants, two elderly trustees of RBL to adhere to the terms of the lease, so any judgement would likely be for damages only. In reality the relative size of the parties could influence the decision with the result that any award is likely to be quite low. Even then it appears that RBL and the trustees may not be in a position to pay any damages. The Council could then take further action against the trustees personally. However, the sympathy of the court is likely to be even more against the Council because the court expects organisations with the Council's level of resources to resolve matters of this sort in a practical way. Any award would potentially be low and potentially impossible to recover without quite severe effects on the trustees. All court actions are costly and can have unexpected results. In all of the circumstances it is recommended that the surrender of the lease is accepted.

All the options for the future of the building are within the Council's discretionary powers. If the Council were to consider a lease without open marketing or at a lower price it would have to do so using its discretionary power under the General Disposal Consent (England) 2003.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

Ward : Harwich East

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Tendring District Council is the owner of the wider site which contains a number of buildings variously let to clubs and organisations. Some building conditions are poor, although others are sound. The site comprises a communal parking and access area with tenanted and privately occupied buildings and areas as shown on the attached plan at appendix A.

The RBL building is a 210m² (approximately) framed structure mostly clad in corrugated steel sheeting with some timber cladding. There is a small brick annexe that has been converted from WCs to the drinks cellar. The building appears to date from the World War II period. It is understood that following the acquisition of the site by Harwich Urban District council the building was used as a social club for that authority. Following reorganisation the building was let to RBL by a series of leases from 25 March 1988 to 31 March 1995, from 1 April 1995 to 31 March 2002 and then holding over until 27 April 2011 when a new lease for the RBL building was created on the same terms as the preceding lease from 1 April 2011 to 31 March 2038.

The lease (and its predecessor) require the trustees to meet the costs of all outgoings, rents and rates and to put and keep the building in good and substantial repair. RBL currently benefits from the Community Asset Rent Off-Setting scheme (whereby the rent is effectively reduced to £150.00 per annum). RBL have limited income and relied on income from the Harwich and District Ex-Servicemen's Association (ESA) who run the bar inside the building. However, it appears that this arrangement is no longer ongoing and RBL advise that they are no longer able to meet their obligations. The trustees have asked for the surrender of the lease before their circumstances lead to a default. Discussions on the potential for ESA to be assigned the lease ended after they took legal advice.

ESA, as well as another local group, a registered charity called the Luney Club, have both expressed interest in taking a lease of the site. Both groups indicate that they think that the building remains sound and that there is no reason that the Council should not let it to them on a month by month basis provided that they are not required to be responsible for the structure of the building and that this lease could be ended when the structure reaches a state in which the building can no longer be used.

If the Council creates a lease of this kind it will itself be responsible for the repair and maintenance of the structure and fabric of the building. This would include both major and minor works. The arrangement proposed: that the Council would not actually spend money on major repair or replacement, but call an end to the lease at the time. This would require the Council to visit the site regularly in order to monitor conditions and close the building as near to its failure as possible. This would impose a risk on the council in allowing the use of the building as it deteriorates further.

CURRENT POSITION

The trustees for RBL are unable to continue to meet their obligations under the lease and have asked to surrender it so that the Branch can continue from another location. The Council does not have to agree to such a surrender, but it would be unlikely that

the Council would gain anything by not doing so and would be exposed to further costs and risk.

It is therefore proposed that the Council agrees to the surrender of the lease in return for full vacant possession of the building with no other conditions on each side in full and final settlement, subject to such other terms that are considered necessary by the Head of Resource Management.

Accepting the surrender of the lease will result in the Council having possession of the property and responsibility for it. The property is in a poor condition. The schedule of condition included at Appendix B illustrates the condition of the property. This is not a structural survey and it is recommended that in the event that Cabinet wish to retain or refurbish the building, a full detailed investigation is carried out prior to commitment to any proposal.

In dealing with the future of the property there appear to be seven main options:

1. Do nothing. In practice this would be to mothball the building: disconnect services and securely board it up periodically inspect for damage or break ins.
2. Let the building on a short term basis as requested on the proviso that the Council will not spend any money on the structure but close the building when necessary.
3. Let the building on condition that the new tenant addresses all of the repairing issues.
4. Carry out immediate structural repairs and let the building with the tenant picking up other refurbishment issues.
5. Fully refurbish the building before letting it to a new tenant.
6. Renew the building before letting it to a new tenant.
7. Demolish the building and provide additional parking on the site.

These options are further considered in the options appraisal at Appendix C.

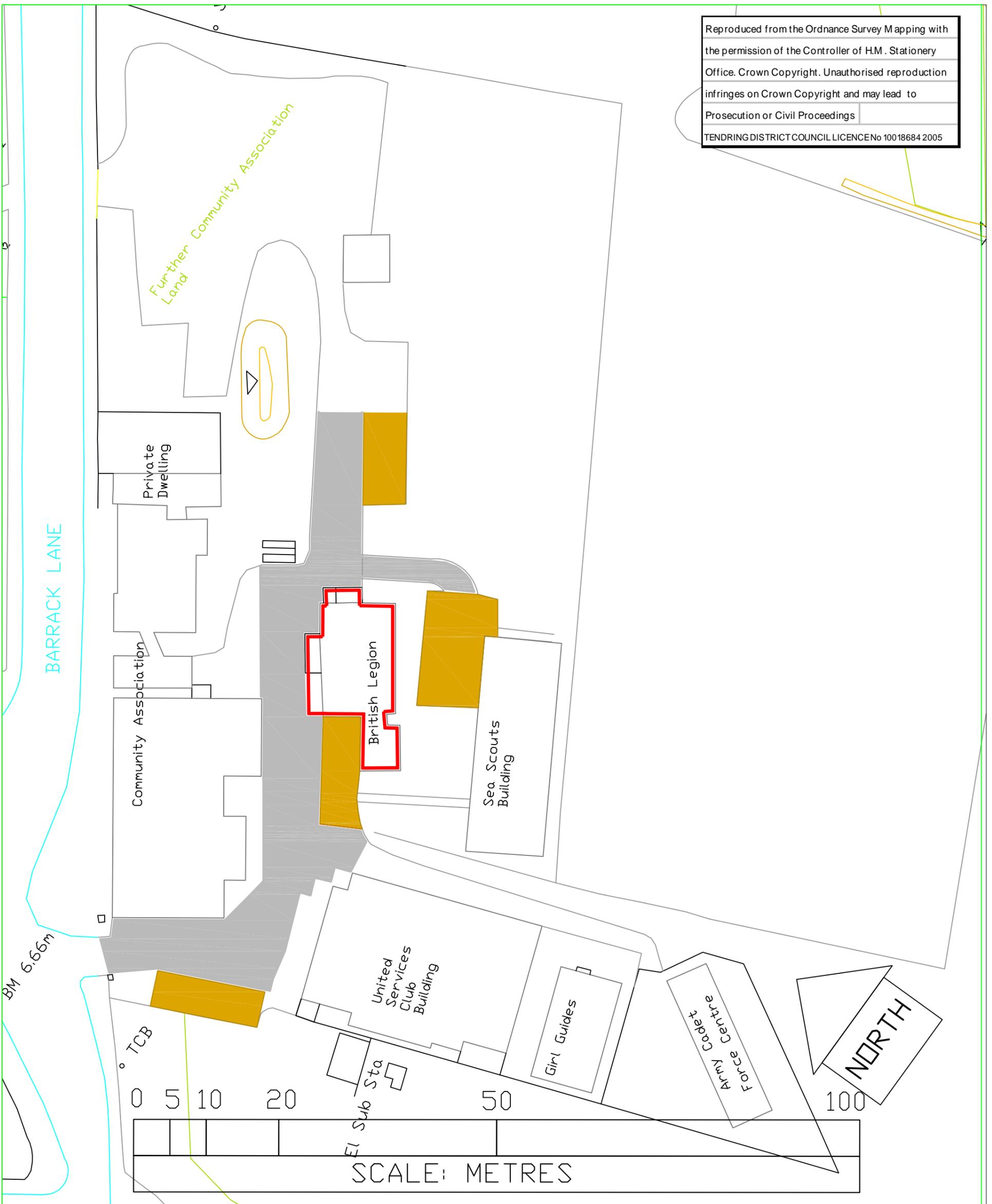
BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

Appendix A – Location plan
Appendix B – Condition record
Appendix C – Options appraisal

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 TENDRING DISTRICT COUNCIL LICENCE No 10018684 2005



TENDRING DISTRICT COUNCIL
 A. KENDALL
 ACTING
 HEAD OF CORPORATE PERFORMANCE

title:
 LAND AROUND BEACON HILL
 HARWICH
drawing:
 LEASE TO ROYAL BRITISH
 LEGION

scale: 1:500
drawn by: A WHITE
date: 20 APR 11

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Condition Record

Royal British Legion

DATE	12 April 2011
OFFICER(S)	A White
WEATHER	Dry and bright. Warm light wind.
ACCESS ISSUES	None. Visual inspection only.

GENERAL DESCRIPTION:

The property comprises a single storey building, mostly clad in corrugated steel sheeting together with a small external area. The front of the building faces to the North.

BOUNDARIES:

There are no fences or other boundary features to the property.

SURFACE:

The area immediately at the entrance to the building includes a concrete entrance ramp with platform and handrails. These appear not to meet current standards. Also included in the property is a small part of the surfaced land between the building and others. This is newly surfaced with bituminous macadam. Gullies around the building are in a poor condition.

EXTERIOR OF THE BUILDING:

The structure is formed in four distinct sections:

1. Main structure walls are clad with corrugated steel sheeting. The sheeting has been recently painted. There are a number of locations where the sheeting has been patched with a range of materials and where open vertical joints have been filled. It is assumed that the cladding is fixed to a timber or steel framed structure. At its base the cladding extends below the level of haunching which it is assumed in turn covers the edges of a plinth or raft. In places the cladding is corroded at its base and there is at least one location where it seems to have receded from the haunching inviting suspicion that the structure behind may have deteriorated. The walls are pierced by five PVCu windows which appear to be in sound condition. The structure is roofed using corrugated steel sheeting. The sheeting undulates noticeably again inviting suspicion of structural deterioration. The sheeting has been painted although there is evidence of the failure of the finish to parts of the South facing roof slope. Gutters are provided to the front and rear.
2. To the West an annexe building similarly constructed but part clad in timber and without windows is linked to the remainder of the building by a similar link. The condition of the elements are similar to those of the main building except that the roof is significantly more corroded. The roof covering to the link is deformed and there is no guttering to the rear.
3. At the front of the building stands a small brickwork porch with a felted roof and timber door and frame. The principal elements are in sound condition.
4. To the East of the building stands a brick annexe without openings and with a felted roof. The structure has separated noticeably from the main building, shows significant cracking and no visible evidence of a damp proof course.

LOBBY:	
A small lobby with:	
Painted plaster walls	Decoratively poor
unpainted timber shelving to each side of the door	Satisfactory
Threshold matting	Fitted over damaged/ uneven floor
Gas meter	Not tested
Single light fitting	Not tested
FUNCTION ROOM:	
Main room:	
Walls part panelled, part artexed	Satisfactory
Floor vinyl covered with carpeting to edges	Covering good but floor is significantly higher at the centre and falls to edges, particularly to the SW.
Slightly raised plinth area to NW	Satisfactory
Suspended lay-in grid ceiling	Some discoloured tiles
Lay in light fittings within ceiling grid and downlights set into tiles at the perimeter.	Not tested.
Two heater/chiller air handling units fitted to the ceiling.	Not tested.
Extensive surface mounted wiring and several socket outlets	Not tested.
5 Radiators	Not tested.
5 PVCu windows	Not tested.
LINK/STORE:	
Small link doubling as storage:	
Walls and floor comprising painted fibreboard.	Visible areas sound but decoration poor.
Floor part carpeted and part chipboard.	Satisfactory.
1 Bulkhead light fitting	Not tested.
SNOOKER ROOM:	
Separate room:	
Painted plasterboard walls	Joints cracked. Decoration poor
Battened fibreboard ceiling	Boards saging in places.
Carpet tiled floor	Tiles laid loose. Open joints
Fire exit door	Satisfactory
2 flourescent light fittings	No diffusers fitted. One not working
2 Radiators	Not tested.
Range of cupboards and coat pegs	Satisfactory.
MALE WC:	
Painted plaster walls	Good.
Artexed ceiling	Good.
Atexed modesty screen	Satisfactory.
Safety flooring	Satisfactory: one open joint.

2 urinals, 1 basin and 1 standard closet set	Good.
Water heater	Not tested.
Hot air hand drier	Not tested.
Radiator	Not tested.

FEMALE/ACCESSIBLE WC

Tiled walls	Good.
Artexed ceiling	Good.
Accessible toilet cubicle	Good.
Safety flooring	Good.
1 basin and 1 accessible closet set	Good.
Water heater	Not tested.
Hot air hand drier	Not tested.
Radiator	Not tested.
Built in cupboards	Satisfactory

KITCHEN:

Painted plaster walls	Satisfactory.
Artexed ceiling	Satisfactory.
Safety flooring	Satisfactory.
Work surface to two sides	Good.
2 base units	Poor.
Inset sink.	Satisfactory.
Vailant gas boiler	Not tested (filling loop left connected).
1 radiator	Not tested.
"Alto" point of use water heater	Not tested.
1 PVCu window	Satisfactory.
1 Louvred light fitting	Not tested.
2 Wall units	Satisfactory.
Range of open shelving	Satisfactory.

BAR:

Vinyl covered walls	Poor.
Suspended lay-in grid ceiling	Some broken tiles
Safety flooring	Satisfactory.
Lay in recessed light fitting	Not tested.
Roller shutter to main area	Satisfactory.
Melamine faced board shelving and bar	Satisfactory.
Range of Bar fittings	Satisfactory.

BAR STORE:

Painted matchboard walls	Poor
Boarded ceiling	Satisfactory
Range of shelving	Poor
Chipboard floor	Poor
Light fitting	Not tested.
Chiller unit	Not tested.

REAR STORE:	
Masonry walls	Painted finish poor
Concrete floor	No covering. Ramp up to main store
Concrete ceiling	Poor.
Range of shelving.	Poor.
Batten holder light fitting	Not tested.
ATTACHMENTS:	
Photographs (27No)	

Note: This record is for use only in conjunction with the accompanying lease for the purpose of recording the general condition of the property. No advice to the tenant or any other person is intended. Recording of any existing want of repair is not intended to mitigate the tenant's responsibility for repair under the lease.

Option	Preliminary estimate of revenue implication	Capital or one off costs	Other factors or implications	Appraisal
1. Mothball the building	£4,000 pa (costs)	£3,000	The Council would have to cut off all services and board up the building. Business rates would have to be paid and periodic inspections and re-securing of the building carried out.	Not recommended. This simply defers a decision on one of the other options. The Council would be open to increasing costs and risks.
2. let the building short term without repairs	£1,200 pa	£0	There would be pressure to keep the building open as long as possible, but risks mounting as the building decays.	
3. Let the building on condition that the new tenant addresses repairing.	£0 pa	£0	It may prove hard to let the building on these terms because of the current condition. If at all possible a substantial rent free or reduced period would be likely.	Not recommended. Significant works are required and it is unlikely that a community group will be able to resource them. There can be liability for the Council if the tenants default.
4. Carry out immediate structural repairs only and let the building	£150 -£2000 pa (income)	£25,000	It may still be hard to let the building because of internal and long term structural issues. This would not address the unsuitability of the building or the potential overall structural issues.	Not recommended. Significant works are required and it is unlikely that a community group will be able to resource them. There can be liability for the Council if the tenants default.
5. Fully refurbish the building before letting it to a new tenant.	£150 - £4,000 pa (income)	£160,000	Subject to detailed feasibility. Planning permission would be required. It may be that the existing structure is not suitable to bear the weights of the new materials involved. There is a high risk of unforeseen works.	Not recommended. Costs are disproportionate in relation to the likely value of the project.
6. Renew the building before letting it to a new tenant.	£150 - £5,000 pa (income)	£600,000	Subject to detailed feasibility. Planning permission would be required. It is not clear that there is demand for such a building.	Not recommended. Costs are disproportionate in relation to the likely value of the project.
7. Demolish the building	£0 pa	£31,000	Planning permission would be required	Recommended. Initial investment removes liability and leaves an improved communal area for other users. A potential future site wide scheme is possible.