

<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>No</b>
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## PORTFOLIO HOLDER FOR FINANCE AND CORPORATE RESOURCES

18 January 2019

### A.1 Variation of terms of Lease over Rush Green Bowl, Clacton

Report prepared by Jennie Wilkinson

#### PART 1 – KEY INFORMATION

##### **PURPOSE OF THE REPORT**

To vary the terms previously agreed to facilitate the new Lease being completed quickly in order for the proposed tenant (FC Clacton Community Society (the Football Club)) to apply for grant funding.

##### **EXECUTIVE SUMMARY**

In June 2017 Cabinet agreed to a Lease over the Rush Green Bowl, Clacton. This decision went to Cabinet as the rental figure was for less than the valuation received.

The Council's legal team have had a difficult job unravelling issues with the previous lease due to actions of the previous tenant while in occupation under the previous lease and this has delayed the finalisation of the new Lease.

In order to be able to complete the Lease quickly so that the Football Club can apply for funding to invest in the property, it is necessary to amend the extent of the property and the associated rental, together with the start date of the term.

##### **RECOMMENDATION(S)**

**That the Portfolio Holder agrees to vary the previously agreed Heads of Terms, agreed by Cabinet in June 2017, as follows and authorises the Deputy Chief Executive to enter into a lease of the building on these terms and such other terms as he considers appropriate.**

The following revisions to the previously agreed terms are required:

- The extent of land for the lease needs to be amended to exclude the area the subject of the sub-tenancy. See plan at Appendix A showing the new extent edged red and the area excluded edged light blue.
- The rent due from F C Clacton Community Society under the lease for the first 5 years up until the first rent review to be reduced by the amount that they will no longer receive from the sub-tenant.
- The term of the lease to start on completion of the lease rather than the date specified in the Heads of Terms so that there are 25 years unexpired when the new lease is signed.

#### PART 2 – IMPLICATIONS OF THE DECISION

##### **DELIVERING PRIORITIES**

The completion of the new 25 year lease will help towards the following Council priorities:

Promote healthier lifestyles and wellbeing

First rate leisure facilities

Make the most of our assets

## **FINANCE, OTHER RESOURCES AND RISK**

### **Finance and other resources**

The Football Club currently have a sub-lease to a telecommunications company for a mast that provides them with a small income. It is proposed that the land subject of the sub-lease is removed from the extent of this lease and the previously agreed rent level reduced by the amount the Football Club would have received from the sub-tenant.

Separate negotiations and a separate decision will be sought in respect of a Lease between the Council and the telecommunications company, but it is intended that as a minimum the rent being paid by the company under the current sub-lease with the proposed tenant will be paid to the Council and therefore the aggregate amount of rental for this site should not change from that approved by Cabinet.

### **Risk**

The legal team still have some work to do on unravelling some legal issues around the sub-lease prior to the Council being able to grant a lease directly to the telecommunications company and receive rent from them meaning there may be a deficit in the overall rental income for a period of time. However, if the main lease to the Football Club can be completed swiftly this reduces the area of land significantly that is being used with no formal lease in place due the aforementioned legal issues surrounding the previous lease thus reducing the risk of proprietary claims in respect of the land by the Football Club and therefore on balance it is thought the risk is outweighed by the benefit.

## **LEGAL**

Section 123(1) Local Government Act 1972 indicates that, a local authority may dispose of land held by it in any way it wishes so long as (section 123 (2)) the land is disposed for a consideration not less than the best that can reasonably be obtained. However, such disposal can be made with Cabinet authorisation which was obtained in June 2017; as stated above, it is the Officer's view that the rental level overall for the land will remain as agreed by Cabinet if not more.

## **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.

None

### **Area or Ward Affected**

Rush Green Ward

## **PART 3 – SUPPORTING INFORMATION**

### **BACKGROUND**

A report was agreed by Cabinet in June 2017 with regard to the granting of a new Lease to FC Clacton Community Society; the matter went to Cabinet due to the fact the rent level proposed was less than the valuation received.

Unfortunately, the Directors of Total Project, who were the previous tenants under the lease, wound up the Company without assigning the Lease to anyone. The Council's legal team have, after some considerable work, managed to sort out this lease.

There is however a further complication in that there is also an authorised sub-lease in the name of Total Project Limited granted to a telecommunications company and this will also require some work in order to correct the position. In the meantime FC Clacton Community Society are keen to get a signed Lease in place with a 25 years term remaining in order for them to apply for grants for the property. To facilitate the new lease being completed quickly and the terms being acceptable for funding purposes, the following revisions to the previously agreed terms are required:

- The extent of land for the lease needs to be amended to exclude the area the subject of the sub-tenancy. See plan at Appendix A showing the new extent edged red and the area excluded edged light blue.
- The rent due from F C Clacton Community Society under the lease for the first 5 years up until the first rent review to be reduced by the amount that they will no longer receive from the sub-tenant.
- The term to start on completion of the lease rather than the date specified in the Heads of Terms so that there are 25 years unexpired when the new lease is signed.

#### **BACKGROUND PAPERS FOR THE DECISION**

None

#### **APPENDICES**

**Appendix A – Plan**