

Key Decision Required:	No	In the Forward Plan:	No
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**PORTFOLIO HOLDER FOR
CORPORATE, FINANCE AND GOVERNANCE**

06 MAY 2022

A.1 INITIATION OF THE PROPERTY DEALING PROCEDURE IN RELATION TO CLACTON PAVILION AND THE POTENTIAL ACQUISITION OF THE LEASEHOLD INTEREST BY THE COUNCIL OR THE DISPOSAL OF THE FREEHOLD INTEREST

(Report prepared by Andy White)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT
<p>To consider whether to initiate the property dealing procedure in respect of the potential ending of the current lease of Clacton Pavilion by either:</p> <ul style="list-style-type: none"> • the acquisition of the leasehold interest by the council, or; • the disposal of the freehold interest

EXECUTIVE SUMMARY
<p>The site is shown edged red on the plan. It is let to Clacton Pavilion PLC with 96 years unexpired.</p> <p>The lease contained a rent-free period, initial premium, obligations on the tenant to completely redevelop the site and a rent payable at a proportion of the market rent for the completed building from the end of the rent-free period.</p> <p>Following the initial lease two supplemental leases and a deed of variation were agreed in order to change the nature of the work and timescales. Consequential amendments including rent provisions and cliff stability requirements and user provisions were also included.</p> <p>Various of the lease provisions and matters related to the erection of a Ferris Wheel have fallen into dispute. There is potential for a legal claim against the Council.</p> <p>The relationship between the parties is and has been difficult and, subject to terms, it may be appropriate to end it by one party acquiring the other's interest or the transfer of interests to other parties.</p> <p>The Portfolio Holder is therefore requested to consider whether to begin the procedure for the acquisition/disposal of the land.</p>

RECOMMENDATION(S)
That the Portfolio Holder initiates the property dealing procedure, whereby Officers consider the potential transaction(s) in accordance with the Council's Constitution.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES
The property offers potential to contribute to Council Priorities of:

• Public spaces to be proud of in urban and rural areas.	• Use assets to support priorities
• Maximise our coastal and seafront opportunities	• Support existing businesses
• Promote Tendring's tourism, cultural and heritage offers	• Develop and attract new businesses

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The current lease provides a small annual revenue income. The Council has no direct obligations in relation to the site. Some resource is required to deal with landlord related matters such as reviews and consents.

In the event that the Council and tenant agree that the Council will acquire the lease the Council will be required to fund that acquisition but will have the opportunity subsequently to sell or lease the site to another party. The detailed financial effects will be subject to valuation within the process. The Council would gain full control over the site.

In the event that the Council and tenant agree that the tenant or another party will acquire the freehold the Council will receive a capital receipt but will have no future revenue income. The detailed financial effects will be subject to valuation within the process. The Council would yield up all (non statutory) control of the site.

In the event that no agreement is reached with the tenant any legal claim will have to be resolved, potentially by court action(s). The detailed financial impacts will be determined within any such resolution. The Council's status quo in terms of control and rent would be unchanged. Further opportunities to revisit the varied and various lease terms may present themselves in the future. The Council could equally market the site for open sale or sell to another party.

In line with the council's constitution and in the circumstances the procurement of two specialist valuations of the various potential transactions will be required. The likely cost of specialist valuations is likely to be significant and will place strain on service budgets. Officers do not have authority to waive the requirement for two valuations.

It is likely that any transaction or dispute will require protracted engagement by the Council's senior officers.

Risk

The initiation of the process has no inherent risk. Each of the potential outcomes has some risk attached to them. These will be considered in the relevant future report for decision as applicable.

LEGAL

In coming to decisions in relation to management of assets, the Council must act in accordance with its statutory duties and responsibilities. Under case law following Section 120 of Local Government Act 1972, the Council is obliged to ensure that the management of its assets is for the benefit of the district.

Section 120(1) of Local Government Act 1972 provides for the Council to acquire land either within or outside the District for any purpose within that or any other Act or for the benefit, improvement or development of the area.

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.

The General Disposal Consent Order (England) 2003 gives consent for disposal at below best consideration reasonably obtainable provided that the undervalue is less than £2m and the proposal enhances the environmental economic and social wellbeing of the area.

Section 123(2A) Local Government Act 1972 indicates that, a local authority may not dispose of open space land held by it without advertising its intention to do so in the local press.

Given the circumstances of the case if the Portfolio Holder authorises the conduct on disposal process Cabinet will be called upon to consider:

1. any public objections.
2. acquisition or disposal terms,
3. potentially applying the general disposal consent

OTHER IMPLICATIONS

Consideration has been given to the implications of the recommendations proposed and any significant issues are set out below.

Consultation/Public Engagement	N/A
Crime and Disorder	The improvement and development of the site is likely to have direct benefits in terms of crime and disorder and indirect ones via the delivery of local jobs and enterprise.
Equality and Diversity / Health Inequalities	No identified effects
Net Zero Emissions	No identified effects
Ward	Pier

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The site, shown edged red on the plan. It is let to Clacton Pavilion PLC (now Clacton Pavilion Limited) for a term of 135 years starting on 01 January 1993 and ending on 31 December 2128.

The lease contained a 25 year rent free period in return for an initial premium.

The lease included obligations on the tenant to completely clear the existing structures and to create a new entertainment venue on the site within 5¹/₂ years.

In year 26 and beyond rent was to be payable at a proportion of the market rent for the completed building.

In 1995 a supplemental lease of additional land to the East of the site was granted in order to create a crazy golf facility.

By 2008 no redevelopment had been carried out and a deed of variation was granted to:

- Substitute a remodelling of the existing building rather than the redevelopment in the original lease
- Substitute the market rent for the shell of the building for the proportion of the whole rent as previously included.

In 2015 a further supplemental lease was granted of land to the East of the site to facilitate:

- the relocation of the crazy golf to the newly leased land;
- the relocation of rides to the former position of the crazy golf, and;
- the creation of a new water park in the former position of the rides.

As part of that lease the Council agreed an exclusion zone of 1.2Km within which it would not permit or facilitate a water feature on its other land within five years of the start of the supplemental lease.

The water park proposal formed part of a package including building extensions, conversions and improvements.

Following the grant of the latest lease a water park has been created comprising a paddling pool, some artificial grass and some sheds. Part of the crazy golf was relocated. No other work has been completed.

In 2017 the first rent and rent review fell due. It emerged that the deed of variation had revised the principal rent provision but that the provision for a third party expert to be appointed to determine the rent if not agreed had not been revised. The latter still referring to the proportion of the market rent. As a result the rent was set at a level that included the original proportion of the rent, for the shell only.

In 2020 the tenant sought urgent consent to site a Ferris Wheel on land included in the latest lease. In 2021 the tenant's engineer advised that the land could safely sustain the proposed wheel and accordingly the Council's consent was given.

Following third party queries the Council appointed a further engineer to review the findings. The new engineer advised that it was impossible to conclude that the wheel could be safely located as proposed. Accordingly the Council withdrew its consent and drew to the attention of the tenant the safety issues raised.

A site meeting between the parties including engineers and solicitors was held. It was agreed that the wheel would be erected in a different location and that the Council would cover the cost of temporary storage of the wheel.

The tenant has indicated that there may be a legal claim against the Council to the effect that, inter alia the withdrawal of consent to site the wheel as originally proposed was incorrect.

The Council refutes all allegations.

CURRENT POSITION

Discussions with the tenant are currently suspended, pending consideration of whether terms for the ending of the lease can be concluded either by the tenant buying the freehold or the Council buying the lease.

The Portfolio Holder is therefore requested to consider whether to begin the procedure for the acquisition/disposal of the land.

APPENDICES

- Appendix A – Location Plan
- Appendix B – Assessment of Acquisition Feasibility