

i RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

PART 1 – PUBLIC DOCUMENT

Any interest to declare/ or conflict and any dispensation granted: None

SERVICE DIRECTORATE: Enterprise

1. DECISION TAKEN

Agreement of a long outstanding rent review from 2011 of Site 8, Blackhorse Road, Letchworth Garden City at a rent of £38,000 per annum.

2. DECISION TAKER

Steve Crowley, Service Director - Enterprise

3. DATE DECISION TAKEN:

6th February 2025

4. REASON FOR DECISION

The rent reviews effective from 13th December 2011 and from 13th December 2022 in respect of this property are outstanding. Various attempts have been made to settle the 2011 rent review, but this has not proved possible. The last attempt to agree the rent review was not successful for the reasons detailed in section 8. Negotiations have been undertaken with the tenant and we have now reached agreement, subject to approval, at a rent of £38,000 per annum backdated to 2011. This includes payment of the back rent in full prior to the financial year end. Discussions can then commence on the 2022 rent review and the tenant's desire for a new lease.

5. ALTERNATIVE OPTIONS CONSIDERED

We have now reached an impasse in negotiations and the only other alternative would be to refer the matter to arbitration. This would delay the matter further, incur costs and may not achieve a better outcome.

6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)

Not applicable.

7. FORWARD PLAN

7.1 This decision is not a key Executive decision and has therefore not been referred to in the Forward Plan.

8. BACKGROUND/ RELEVANT CONSIDERATIONS

8.1 This is a long outstanding matter where two attempts had been made in the past to settle the rent review due in 2011. It was agreed last year to credit invoices raised in error as the tenant had stopped paying any rent following the last attempt to settle this

matter. Advice was obtained from legal department at the time that it would not have been possible to pursue forfeiture of the lease for the non-payment of rent as the invoices had been raised without formal agreement to the revised rent by the tenant.

- 8.2 In 2011 a provisional agreement had been reached with the previous tenant to settle the rent review at £37,000 per annum based on the evidence available at the time. This agreement was never formalised, and it is not clear why this was the case. The previous tenant assigned the lease to Ludos Properties in August 2013. They were given details of the provisional agreement and acquired the property on the assumption that the review would be settled at £37,000 per annum.
- 8.3 A further attempt to settle the rent review was not made until 2020. A higher rent was provisionally agreed but the tenant made this conditional upon receiving a new longer lease. However, this resulted in an impasse as the Council refused to grant a new lease until the rent review was first agreed and the arrears due based on the revised rent had been paid. The tenant was adamant that their agreement to the revised rent was conditional upon them being granted a new longer lease.
- 8.4 Despite no new lease being granted at the time, the Council began charging the revised rent. The tenant advised that they would only pay rent at the figure they had previously been paying and requested revised invoices. The Council continued to issue invoices at the higher figure, and this resulted in the tenant refusing to pay any rent until they were issued with invoices for the correct amount. This resulted in substantial 'arrears' showing against their account and in May last year it was agreed to cancel the invoices on the basis that they had been 'raised in error'. Revised invoices were then issued at the rent payable pre 2011 and the tenant has now paid all rent due on that basis up to to-date.
- 8.5 Having resolved the above issue, negotiations could begin to settle the outstanding 2011 review. Limited comparable evidence is now available from 2011, but based on what is available an agreement has been reached with the tenant at a figure of £38,000 per annum. This is £1,000 per annum more than was provisionally agreed with the tenant in 2011 based on the evidence available to the Council's surveyor at that time. The tenant is not prepared to pay any more than this and, if not agreed, the matter would need to go to arbitration resulting in further delay, additional costs and may not achieve a better outcome.
- 8.6 We would recommend acceptance of the December 2011 rent review at a rent of £38,000 per annum to settle this long outstanding matter. The tenant has advised that they would be prepared to pay the increased rent due back dated to 2011 by the end of the financial year.
- 8.7 A settlement of the 2011 rent review will enable discussions to commence on the rent review outstanding from December 2022 and the tenant's desire for a new lease.

9. LEGAL IMPLICATIONS

- 9.1. This delegation is made under section 14.6.2(c) of the Scheme of delegation to officers set out in the Council's Constitution. The Scheme and the delegation operate in accordance with Section 9E of the Local Government Act 2000 and Section 101 of the Local Government Act 1972 and all other enabling powers applicable to the Council.
- 9.2. Under section 12.5 of the Council's Financial Regulations the Service Director is responsible for rents that are payable under tenancies. Under section 14.6.7 (b) (i) B of the Council's Constitution the approval of the revised rent is delegated to the Service Director – Enterprise as the revised rent is below £50,000 per annum, so the approval of this settlement is within the Service Director's remit.

9.3. The settlement of this review should not have any other legal implications arising from the decision and will not have a bearing on any future rent reviews that need to be agreed.

10. FINANCIAL IMPLICATIONS

10.1. Settlement of the rent review at £38,000 per annum will enable the Council to receive additional back income of over £39,000 prior to the financial year end as it is an increase of £3,000 per annum over and above the current rent payable.

11. RISK IMPLICATIONS

11.1 Good risk management supports and enhances the decision-making process increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.

11.2. The Council is still at risk prior to the tenant signing the rent review memorandum as they could change their mind at agreeing to a rent of £38,000 from December 2011 and the matter may then be further delayed or need to be referred to arbitration.

12. EQUALITIES IMPLICATIONS

12.1 There are no equalities implications.

13. SOCIAL VALUE IMPLICATIONS

13.1 The Social Value Act and “go local” policy do not apply to this decision.

14. ENVIRONMENTAL IMPLICATIONS

14.1. There are no known Environmental impacts or requirements that apply to this report.

15. HUMAN RESOURCE IMPLICATIONS

15.1 There are no human resource implications

16. BACKGROUND PAPERS

16.1 None.

17. APPENDICES


17.1 None.

NOTIFICATION DATE

14th February 2025

Signature of Executive Member ConsultedNot applicable

Date: 6th February 2025

Signature of Decision Taker 

**Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.
Call-in does not apply to NON-EXECUTIVE DECISIONS**