

Forward Plan reference number: *Not applicable*

Report title: <i>Lease renewal for Units 1 & 2, The Moorfield Centre, Guildford</i>	
Report to: <i>Nicole Wood, Executive Director for Finance & Technology</i>	
Report author: <i>Ian Fulton, Commercial Finance Business Partner</i>	
Date: 15 th May 2020	For: Decision
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County Divisions affected: <i>None</i>	

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Purpose of Report

- 1.1 The purpose of this report is to approve the agreement of 10 year reversionary leases from Essex County Council (ECC) with Howden Joinery Properties Limited from 13th September 2021 for units 1 & 2, the Moorfield Centre, Guildford on the terms contained in this paper and its confidential appendix.

2. Recommendations

- 2.1 Approve the agreement of a 10 year lease in relation to each unit on the terms described in this paper and the confidential appendix attached to this paper.
- 2.2 Authorise the sealing and completion of the leases on behalf of ECC

3. Summary of issue

- 3.1 Howden Joinery Properties Limited is the current tenant in the two units at the Guildford site, which is part of the ECC commercial property portfolio. The site is made up of 4 industrial units. The head lease of the site is held by Guildford Borough Council.
- 3.2 The existing leases on the two units expire on 13th September 2021.
- 3.3 Discussions have been ongoing in recent months with the tenant to agree new leases for the units to run from the 13th September 2021.
- 3.4 Those discussions have now reached agreement on the terms of new leases for the units on the terms below:
 - 3.4.1 Leases will run from 13th September 2021 for 10 years
 - 3.4.2 The rent will be at the current level, contained in the confidential appendix to this report

- 3.4.3 Rent reviews will be at the start date of the lease and after 5 years of the lease (September 2026). Such reviews will be market reviews with no option for the rent to be reduced.
 - 3.4.4 Howden Joinery Limited will act as guarantor for the rent in relation to one of the units.
 - 3.4.5 the 1954 Landlord and Tenant Act will apply to the leases.
- 3.5 ECC have taken the expert advice of Lambert Smith Hampton, the authority's property consultants, and Essex Legal Services (ELS) in this matter.

Options

- 3.6 **Agree the new lease** – this option will retain the existing tenant in 2 of the 4 units at the site for a 10 year period at market rent. This option is likely to increase the value of the site as there will be a longer weighted average unexpired lease term as a result of the new leases. It will also secure the rental income for the units, which is included in the medium term resources strategy. In the current economic climate this option would appear to offer the best outcomes for ECC. This is the recommended option.
- 3.7 **Market the units to new tenants** – this option would require taking the costs and the risks of marketing and identifying new tenants for the units. The risks of being able to successfully do this for a better financial return for ECC are very high in the current economic climate and it is therefore not a recommended option.

4. Next steps

- 4.1 Once this decision has been approved, ELS will conclude the arrangements to formally seal the leases.

5. Financial implications

- 5.1 The rental income from these two units identified in the confidential appendix to this paper are included in the medium term resources strategy.
- 5.2 The value of the site is reviewed annually as part of the statutory accounts preparation by a third party surveyor to ensure fair value.
- 5.3 The professional costs for the agreement of the new leases are met from existing operational budgets for the commercial property portfolio.

6. Legal implications

- 6.1 ECC acquired and has held the property at the Moorfield Centre as an investment and it is proposed to continue to do so. A county council has power to acquire land outside its administrative area as well as within it (section 120 Local Government Act 1972) so ECC can acquire land outside its area. ECC is authorised to make investments relevant to its functions or for the purposes of prudent management of its financial affairs. The term 'invest' is not defined in

the 2003 Act. (section 12 Local Government Act 2003). The term 'invest' is not defined in the 2003 Act.

- 6.2 It is therefore likely to be lawful to invest in property for the purposes of the prudent management of its financial affairs. Where ECC acquires property for the purposes of achieving an income stream, the importance of undertaking appropriate checks taking appropriate advice cannot be overstated. There are risks inherent to any investment and the key risks associated with this project are set out in the risk section above. Continuing this lease arrangement appears to offer the opportunity to take some risk but earn the opportunity to receive significantly higher income than would otherwise be achievable.
- 6.3 It should also be noted that any owner of commercial property is required to invest in that property from time to time in order to ensure that the property remains marketable in order to retain existing tenants and, when necessary, attract new ones. Retaining the property on a new lease will incur a continuing requirement on ECC to invest.
- 6.4 In any event, the current tenant of Units 1 & 2 has security of tenure pursuant to the Landlord and Tenant Act 1954 and would be entitled to apply to the court for a new tenancy on expiry of the current leases and Essex County Council would only be able to oppose if it could prove specific grounds as set out in the Act.
- 6.5 Essex Legal Services have been commissioned to carry out the conveyancing work associated with the new leases.

7. Equality and Diversity implications

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
 - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. The approval of the leases on essentially the same terms as the

existing leases to the existing tenant will not impact the residents of Essex nor those of Guildford.

8. List of appendices

- a. The confidential appendix
- b. The EQulA

9. List of Background papers

None

I approve the above recommendations set out above for the reasons set out in the report.	Date
Nicole Wood, Executive Director for Finance & Technology	15/05/2020

In consultation with:

Role	Date
Councillor Christopher Whitbread, Cabinet Member for Finance	15/05/2020
Executive Director for Finance and Technology (S151 Officer)	15/05/2020
Nicole Wood	
Director, Legal and Assurance (Monitoring Officer)	30/4/2020
Jacqueline Millward on behalf of Paul Turner	