

**Forward Plan reference number:** *Not applicable*

<b>Report title:</b> <i>New lease, Unit 6b, Keighley Retail Park</i>	
<b>Report to:</b> Nicole Wood, Executive Director, Finance & Technology	
<b>Report author:</b> <i>Ian Fulton, Commercial Finance Business Partner</i>	
<b>Date:</b> 17th July 2020	<b>For:</b> Decision
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<b>County Divisions affected:</b> <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This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.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 that Essex County Council (ECC) sign a new lease on the terms contained in this paper and its confidential appendix.

## **2. Recommendations**

- 2.1 Approve that ECC enters into a new lease for unit 6b at the Keighley Retail Park with Bensons For Beds Retail Limited on the terms contained in this paper and the confidential appendix, on the basis that it represents the best outcome for ECC.

## **3. Summary of issue**

- 3.1 ECC owns land at Keighley Retail Park as part of its investment portfolio. Unit 6b is currently occupied by Bensons for Beds although the tenant is Blue Group UK Group Properties Ltd.
- 3.2 On the 30<sup>th</sup> June 2020, the tenant and other group companies, went into administration. Until this point, Bensons for Beds had been occupying the site under a lease that runs until November 2027. The lease provides for the tenant to break on 19<sup>th</sup> November 2022 subject to payment of fee to ECC of £20,377.50
- 3.3 We understand that the Bensons for Beds brand is now owned by Alteri Investors directly. Alteri had previously owned Blue Group. The company will trade as Bensons for Beds Retail Ltd.

- 3.4 There is an existing debt owed to ECC by Blue Group UK Group Properties Ltd that will now be chased via the appointed administrators. This debt is detailed in paragraph 3 of the confidential appendix.
- 3.5 ECC has negotiated with Bensons for Beds Retail Ltd over the terms for a proposed new short-term lease for the unit, the details of which are in paragraph 2 of the confidential appendix.
- 3.6 The new owners have been impacted by the lockdown restrictions in common with most retailers. The performance of this particular unit has also been hindered by long term roadworks to the highway outside the retail park that started in May 2019 but that are not due to complete until the Autumn 2020.
- 3.7 The new owners have indicated that, should the store's performance improve, they are open to entering into a longer term lease on commercial terms. This is in contrast to several other stores in the chain that have already had notice to vacate served on them.
- 3.8 In the current economic climate, especially in the retail sector, it is considered unlikely that a replacement tenant will be quickly found. The proposed new lease terms are therefore considered the best option for ECC.
- 3.9 ECC have taken the expert advice of Lambert Smith Hampton, the authority's appointed property consultants, and Essex Legal Services (ELS) in this matter.

### Options

- 3.10 **Agree to surrender the current lease and enter a new short term lease with the new owners** – the main benefits of this option are:
  - The existing occupant remains in situ for the next 2 years
  - A rental income is still received subject to the terms detailed in paragraph 1 of the confidential appendix, albeit at a lower level than under the current. Lease terms. The current economic climate makes it extremely unlikely that new tenants will be found in the short term. Any new tenant would also likely require a rent free period.
  - The tenant will continue to pay service charge and insurance for the unit that would otherwise fall to ECC
  - The tenant will continue to pay the business rates liability that would otherwise fall to ECC

This is the preferred option.

- 3.11 **Seek a new tenant on better commercial terms** – given the current economic climate, it is not felt to be realistic that this option could be achieved in the short term. Any new tenant would also likely require several months of rent free period at the commencement of any new tenancy. If a new tenant could not be found then ECC would be responsible for service charge, insurance and business rates, estimated at £41,000 (once the current holiday period ends in April 2021). This option is therefore not recommended.

3.12 **Not agree to surrender the current lease** – there may be some merit in asserting that there has been an unlawful assignment of the current lease and seek future rent from the administrator as rent may be payable as an administration expense, or consent to the assignment but argue that the new tenant must comply with the terms of the current lease rather than agreeing less beneficial terms. Benson for Beds Retail Limited is not insolvent although may have limited covenant strength. The administrator may not have sufficient funds to pay the rent and the new tenant could just seek to terminate the lease although it cannot legally exercise a break option as yet. Specific insolvency advice should be sought if considering this option further. It is not a recommended option.

#### **4. Next steps**

4.1 Once this decision has been approved, ECC will negotiate the detailed lease terms consistent with the Heads of Terms already negotiated with the tenant through to legal completion.

#### **5. Financial implications**

5.1 The existing owner went into administration owing 3 months' rent on the previous lease terms set out in the confidential appendix. This debt will be pursued via the appointed administrators, PWC.

5.2 The difference in annual rents between the previous and the proposed new leases will also negatively impact the current financial year.

5.3 The combined impact of these items in a worst case scenario will be a reduction in income of £63,150 in the current financial year. In 2021/22 the reduction will be £57,150.

5.2 The income budget for the current financial year 2020-21 should still be achievable, as the total portfolio rent roll is currently higher than budget. However, due to the very difficult trading conditions currently across the portfolio as a result of the pandemic, it is far from certain that all other tenants will be able to meet their rental obligations. The existing tenancy void provision created for such situations could also be used to make good any shortfall.

5.3 As the tenant's dilapidations payment is also impacted by the administration, there is a risk that ECC will incur costs over and above the dilapidations contribution made by the new tenant at the point there is a change in occupancy in the future.

5.4 Any professional costs to market the property and conclude new leases with future tenants would be met from existing operational budgets for this purpose.

#### **6. Legal implications**

6.1 In relation to the option set out in 3.10 above, the existing lease will need to be surrendered.

- 6.2 The proposed new lease would wholly replace the existing lease on the terms set out in the confidential appendix which includes a far shorter term than the remainder of the terms under the existing lease.
- 6.3 The new lease is to be outside of the security of tenure provisions of the 1954 Landlord and Tenant Act., which is usual for these arrangements
- 6.4 The financial reasons for accepting the new lease terms are set out in this report.

## **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.

## **8 List of appendices**

- a. The confidential appendix
- b. equality impact assessment

## **9 List of Background papers**

None

<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b>
<b>Nicole Wood, Executive Director for Finance &amp; Technology</b>	20 <sup>th</sup> July 2020

**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Councillor Christopher Whitbread, Cabinet Member for Finance</b>	20 <sup>th</sup> July 2020
<b>David Evans, Head of Service – Property</b>	17 <sup>th</sup> July 2020
<b>Director, Legal and Assurance (Monitoring Officer)</b> <b>Jacqueline Millward on behalf of Paul Turner</b>	17 <sup>th</sup> July 2020