

<b>Committee/Meeting:</b>  <b>King George's Fields Charity Board.</b>	<b>Date:</b>  <b>19<sup>th</sup> March 2014</b>	<b>Classification:</b>  <b>Unrestricted</b>	<b>Report No:</b>  4.1
<b>Report of:</b>  Corporate Director, Communities, Localities & Culture  <b>Originating Officer: Steve Murray</b>		<b>Title:</b> <b>Proposed reassignment of lease by Zeera restaurant. Mile End commercial units.</b>  <b>Wards Affected: Mile End and Globe Town</b>	

## 1. SUMMARY

- 1.1 At the Trust meeting on the 29<sup>th</sup> January 2014 Members discussed the proposal to reassign the lease of unit 554 (Zeeras) Mile End Road. Members discussed the offer from Tesco for a takeaway style business at the unit. Details of this offer were tabled at the meeting. Members sought clarity on a number of points including whether this would involve a change of use if approved and the terms of the lease in relation to this.
- 1.2 Members also questioned the impact of the proposal on the other business (under the Trust's management) in the area. The Board also expressed a preference for the existing restaurant use given the perceived lack of such uses in the Parade. As a result, it was agreed that a further report be prepared covering such issues and an additional meeting of the Board be arranged to consider this.

## 2. DECISIONS REQUIRED

King George's Fields Charity Board (KGFCB) is recommended to:

- 2.1 To consider the advice from the Council's legal services regarding the proposed reassignment of the lease for unit 554 Mile End Road and the required change of use to achieve this

- 2.2 To provide a response to the request by current leaseholders of unit 554 Mile End Road, Zeera's restaurant, to allow them to reassign their lease to Tesco Ltd.

### 3. **BODY OF REPORT**

- 3.1 Following the meeting on the 29<sup>th</sup> January 2014 clarification of the Trusts legal position specific to this lease has been secured. This has confirmed that the Council is not obliged to consider a change of user and therefore have the right to refuse the application to reassign the lease on Unit 554 Mile End Road to Tescos Ltd.
- 3.2 The lease for 554 Mile End Road dated 2002 made between LBTH(1) and Urban Developments Regeneration Ltd (2) contains a covenant on the part of the Tenant not to assign part or the whole of the premises without the prior written consent of the Landlord but such consent is not to be unreasonably withheld. It also prohibits an underletting of the premises without the prior written consent of the Landlord.
- 3.3. The permitted user in the lease is "Use within Class A3 of the Use Classes Order as an Indian Restaurant with/without an off-licence", the tenant would require the landlords consent in the form of a deed of variation. The landlord is not obliged to give such consent and could charge for any agreement to vary the lease.
- 3.4 The Landlord is not obliged to agree a change of user so could refuse without having to give any reasons. With regards to the consent to assign the lease the landlord has to act reasonably in refusing such consent. Here the trust could withhold consent on the grounds that the proposed assignee will not use the premises for the use permitted in the lease.
- 3.5 Planning consent and landlords consent are two distinct matters. The Council is Landlord in its capacity as Trustees for KGFT. Its decisions are limited to the occupation by the tenant under the terms of the lease. It cannot fetter the Council's decisions as a planning authority. If planning permission was granted for a change of use any tenant would still require landlords consent for that use before it could be implemented.

### 4. **COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 4.1 This report seeks the KGFCB Trustees consideration of the legal advice and response to the request to the reassignment of the lease for Unit 554 Mile End Road Zeera's restaurant, to Tesco. The reassignment of the lease will ensure that rental income will continue to be achieved from the unit. The rental income contributes to sustaining the overall financial position of the park and it is essential that all the units are fully occupied.

## **5. LEGAL SERVICES**

- 5.1 The lease for 554 Mile End Road dated 2002 made between LBTH(1) and Urban Developments Regeneration Ltd (2), contains a covenant on the part of the Tenant not to assign part or the whole of the premises without the prior written consent of the Landlord but such consent is not to be unreasonably withheld. It also prohibits an underletting of the premises without the prior written consent of the Landlord.
- 5.2 The permitted user in the lease is “ Use within Class A3 of the Use Classes Order as an Indian Restaurant with/without an off-licence”, the tenant would require the landlords consent in the form of a deed of variation. The landlord is not obliged to give such consent and could charge for any agreement to vary the lease.
- 5.3. The Landlord is not obliged to agree a change of user so could refuse without having to give any reasons. With regards to the consent to assign the lease the landlord has to act reasonably in refusing such consent. Here the trust could withhold consent on the grounds that the proposed assignee will not use the premises for the use permitted in the lease.
- 5.4. Planning consent and landlord’s consent are two distinct matters. The Council is Landlord in its capacity as Trustee for KGT, its decisions are limited to the occupation by the tenant under the terms of the lease, it cannot fetter the Council’s decisions as a planning authority. If planning permission was granted for a change of use any tenant would still require landlords consent for that use.
- 5.5 However as Trustees of a charity, consideration must be given to protecting the charity’s assets and furthering the charitable objectives. Matters such as the financial position of the current tenant, ie. is the rent account up to date, should also be considered as well as the financial benefits of having a company such as Tesco as tenant and also the possibility of an additional payment for agreeing a variation of the lease. In considering this matter due regard should also be paid to the mix of tenants at the Green Bridge shops as a competing business could affect the financial viability of an existing tenant and their ability to pay their rent.

## **6. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 6.1 There are no direct sustainability implications in this report.

## **7. RISK MANAGEMENT IMPLICATIONS**

- 7.1 There is a potential risk that if the present leaseholder is not permitted to reassign their lease on this occasion that they may decide to give notice on their lease. This could result in a period of vacancy, loss of income and re-letting costs. Officers are of the view that current local demand for units in this location is reasonably strong and all things remaining equal a prolonged period of vacancy would not be anticipated.

**8. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 8.1 There are no specific crime and disorder implications around this proposal.

**9. EFFICIENCY STATEMENT**

- 9.1 N/A

10. **APPENDICES**

**Local Government Act, 1972 Section 100D (As amended)  
List of “Background Papers” used in the preparation of this report**

*Brief description of “background papers”*

*Name and telephone number of holder  
and address where open to inspection.*