


Non- executive Report of the: King George's Fields Charity Board 28 th July 2015	 TOWER HAMLETS
Report of: Aman Dalvi, Corporate Director of Development & Renewal	Classification: Unrestricted
Grant of New Lease - 554 Mile End Road	

Originating Officer	Russell Shaw
Wards affected	Bow West, Mile End East

Recommendations:

The Board is recommended to give its approval to grant a new lease to Development Regeneration Limited of 554 Mile End Road upon the following principal terms as set out in the Exempt Appendix.

1. REASONS FOR THE DECISIONS

- 1.1 To regularise the position of the company currently in occupation of the property, following the disclaiming of the lease by the Treasury Solicitor as a result of the liquidation of the original tenant company.
- 1.2 The proposal will be cost neutral for the Trust and crucially will maintain receipt of the market rent for the unit.
- 1.3 The proposed course of action will avoid the occurrence of a vacant unit with the consequential loss of rental income and also minimises expenditure on professional fees in respect of marketing of the property.

2. ALTERNATIVE OPTIONS

2.1 Do nothing

Following a disclaimer of the lease it is likely that a Tenancy at Will has been created but without terms setting out the rights and obligations of both the council as landlord and the tenant having been defined. This is not a satisfactory position for either party. A Tenancy at Will is properly adopted for short-term occupation and is not appropriate in the circumstances of this case. In this situation, where a restaurant business has been established with significant capital investment both parties rights and obligations should be set

out in a lease, thereby regularising matters. To do nothing, therefore, is a high risk option.

2.2 Take possession of the property

The council could attempt to terminate the existing occupation with a view to re-letting the property. However, the occupier would undoubtedly contest such action on the basis that they have been paying the full reviewed rent, albeit that the council was unaware that it was being paid by Development Regeneration Limited (as referred to at paragraph 3 of this report) and that accordingly they could claim a full protected tenancy under the Landlord and Tenant Act 1954. They would stand a reasonable chance of success in such a claim. Taking this action would therefore be considered to be a high risk option, with potential damage to the Council's reputation when weighed against what stands to be achieved by granting the proposed lease..

3. DETAILS OF REPORT

- 3.1 This commercial unit was leased by the council to Urban Developments Regeneration Limited under the terms of a tenancy dated 15th July 2002 for a term of 25 years from 7th July 2002.
- 3.2 The unit trades as "Zeera", an Indian restaurant and in February 2015 the council received a request from the tenant's solicitor, pursuant to tax advice obtained by their clients, to transfer 554 Mile End Road by way of an assignment from the current leaseholder to another company within the group of companies which is owned by the same beneficial owners.
- 3.3 As part of due diligence enquiries undertaken by officers in relation to the assignment request, it was discovered that the original tenant company, Urban Developments Limited was dissolved with effect from 2nd November 2011.
- 3.4 The dissolution of Urban Developments Regeneration Limited in 2011 took place without the knowledge of the council, it not being notified by the tenant.
- 3.5 The proposed tenant with a similar-sounding company name, i.e. Development Regeneration Limited began paying rent thereafter.
- 3.6 Given that the terms of the former lease are no longer in existence, fresh terms mirroring those of the original lease but subject to modernisation as appropriate, have been provisionally agreed as set out in the appendix to this report.
- 3.7 Under the former lease the rent payable has been fixed at the full market rent following the last rent review in 2012. The next review under the former lease would have been 2017 and it is proposed that the existing market rent is paid for the first 2 years of the new lease, reviewed at the second anniversary and every five years thereafter.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The income from the commercial unit currently leased by Zeera, contributes towards KGFT Mile End delivering a balanced budget. Doing nothing, will put the delivery of the income at risk, whilst taking repossession of the property may result in a challenge, which would be unbudgeted and put at risk the delivery of a balanced budget. It is the Trusts responsibility to ensure that the rental income from Units contributes to sustaining the overall financial position of the park, and it is essential that the income is maximised and costs managed.

5. LEGAL COMMENTS

- 5.1 London Borough of Tower Hamlets holds the freehold title of this property as trustee and can therefore give good title. The proposed lease has been drafted to reflect the Heads of Terms between the parties. The Tenant's solicitor has provided an undertaking to pay the Council's costs and surveyors fees.
- 5.2 The Council as trustee is permitted under the Charity Commission Scheme dated 28th February 2000 to let the shops at Mile End Road which it holds on trust. The Council as trustee has a fiduciary duty to ensure that the property and finances held on trust are protected. For the reasons given in paragraphs 2.1 and 2.2 above the Council as trustee is advised that arrangements be made for a formal lease with the current occupier at a rental which reflects the market value.
- 5.3 The Council is acting as trustee and as such is bound by the Charities Act 2011 and the Charity Commission Scheme. The proposed lease does however amount to a disposal for which the Commissioners' prior written agreement is required. The Secretary of State for Communities and Local Government issued Directions dated 17 December 2014 pursuant to the powers under section 15(5) and (6) of the Local Government Act 1999 (the "Directions"). The Directions, at paragraph 4 (i) provide that the Council must "*take the actions set out in Annex A...*". Paragraph 5 of Annex A requires that the Council, until 31 March 2017 *obtain the prior written agreement of the Commissioners before entering into any commitment to dispose of, or otherwise transfer to third parties, any real property other than existing single dwellings for the purposes of residential occupation.*" Accordingly the proposed lease is a disposal under the Council's executive functions and will require the prior written agreement of the Commissioners.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 Deriving stable and significant income from the shop units is integral to the Trusts delivery of high quality open space for everyone.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The recommendation in this report provides an effective solution for achieving the aim of regularising the tenancy situation whilst maintaining receipt of the market rent for the property and minimising the council's liability for any costs.
- 7.2 Equally, adopting the proposed course of action will assist in underpinning the Trust's financial stability and ensure that it can continue to deliver its remit within the context of reducing public sector support.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no sustainability issues arising in the context of the board's decision.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 The recommendation in this report aims to minimise risk by protecting the Trust's budget (paragraph 3.3). I don't think this is the right para reference?

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 There are no crime and disorder reductions issues arising in the context of the board's decision.

Linked Reports, Appendices and Background Documents

Linked Report

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Appendices

- Exempt/Confidential information as referred to in report

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

- Mile End Shop Update reports to King George's Field Charity Board – 23.07.15. & 17.09.15

Officer contact details for documents:

- Russell Shaw, Asset Mangement, Extn 4276