


King George's Field Trust Board Meeting 26 October 2022	 TOWER HAMLETS
Report of: James Thomas, Corporate Director Children and Culture	Classification: Partially restricted (exempt Appendix 1)
Leases Update 2022/2023, King George's Field Trust (KGFT)	

Lead Member	Cllr Iqbal Hossain, Cabinet Member for Culture and Recreation
Originating Officer(s)	Catherine Boyd, Head of Arts Parks and Events
Wards affected	All wards
Key Decision?	No
Reason for Key Decision	This report has been reviewed as not meeting the Key Decision criteria.
Forward Plan Notice Published	[Insert date notice was published – see forthcoming decisions webpage]
Strategic Plan Priority / Outcome	[State Priority and/or Outcome from the Strategic Plan 2020-23]

Executive Summary

This report provides an update on the lease arrangements for the King George's Field Trust (KGFT) retail and rental units, income from which supports the Charity to maintain park land and amenities for the benefit of Tower Hamlets residents. This report seeks separate decisions from the KGFT Board regarding the renewal of a Green Bridge Shop unit, the renewal of a Mile End Park lease and to consider whether a Green Bridge lease should be re-gearred. In addition, the report provides an update on a Green Bridge unit that has breached its lease and the potential extension of a services contract with external agents who manage the Green Bridge tenants on behalf of Asset Management.

Recommendations:

The Board is recommended to:

1. Give authority to the Corporate Director of Children and Culture and the Corporate Director for Place to enter into and conclude the renewal of the lease with “Tenant A”.
2. Give authority to the Corporate Director of Children and Culture and the Corporate Director for Place to enter into and conclude lease renewal negotiations with “Tenant B”.
3. Give authority to the Corporate Director of Children and Culture and the Corporate Director for Place to authorise the re-gear of the lease with “Tenant C”.
4. Note the update provided in exempt Appendix 1 regarding lease breaches by “Tenant D” and authorise the Corporate Director of Children and Culture and the Corporate Director for Place to take forfeiture action against these breaches if they are not resolved.
5. Grant approval of an optional one-year extension with the external management Contractor to continue to oversee letting management arrangements on behalf of the Council and KGFT.
6. Authorise the Chair of King George’s Fields Trust to review Lease Agreements on behalf of the Board.

1 REASONS FOR THE DECISIONS

- 1.1 The King Georges Fields charity is registered with the Charity Commission as King Georges Field, Mile End Charity, registered number 1077859.
- 1.2 The Council is the trustee of the Charity and the Council is the freehold owner of the land which is subject to this report.
- 1.3 King George’s Fields Trust (KGFT) Board should consider its charity’s responsibilities as landlord of the Green Bridge retail and other commercial units. This includes ensuring that all statutory requirements are met.
- 1.4 A decision from the Board on the lease is requested in order for the Council’s Asset Management team to be able to instruct lawyers and the external agents to enter into a new lease with “Tenant A”.
- 1.5 A decision from the Board on the lease is requested in order for the Council’s Asset Management team to be able to instruct lawyers and the external agents to enter into a new lease with “Tenant B”.

- 1.6 A decision from the Board on the lease is requested in order for the Council's Asset Management team to be able to instruct lawyers and the external agents to re-gear the current lease with the "Tenant C".
- 1.7 The Board is requested to consider the lease breaches by a tenant and give authority to council officers to be able to take forfeiture action against the tenant if they fail to comply with the current Section 146 notices issued to them.
- 1.8 The current external letting management agent is contracted by the Council's Asset Management team to oversee management arrangements for retail units on behalf of KGFT and the Housing Revenue team. In order to ensure continuity of management arrangements, it is recommended that the optional contract extension of 12 months is granted.
- 1.9 The Board is required to act in the best interest of the Charity and to consider Public Benefit when taking a decision. A guide to Public Benefit has been provided to Board members (Appendix 2).

2 ALTERNATIVE OPTIONS

- 2.1 In respect of the lease renewal of "Tenant A's" lease, it is not considered there is an alternative, as the tenant has a statutory right to a new lease. Should terms not be agreed then the only way to resolve matters are by recourse to the Courts with an associated cost.
- 2.2 In respect of the lease renewal of "Tenant B's" lease, it is not considered there is an alternative option, as the tenant hold part of the property. Under the Landlord and Tenant Act 1954 they have a protected lease and therefore have a statutory right to a new lease on this element. It is sensible to also include the non-protected element, as this facilitates their full business model.
- 2.3 With respect of the lease restructure for "Tenant C", there is no obligation on the Charity to agree the reversionary lease. However, if this is not agreed there is a risk at the subsequent lease renewal that the rent will have fallen and there will be a subsequent rental fall. This will have a longer-term rental impact. The option depends on the strategic approach of the Charity and whether rent or occupation is of paramount importance.
- 2.4 The tenant detailed in Appendix 1, has not only breached the health and safety aspect of the lease on a regular basis, but is also in arrears. To date instructions have been given to serve a formal Notice warning the tenant that they are in breach, and they are to be given a period to improve matters. Should this not occur it is considered there are no other alternatives but to progress with the Forfeiture route.
- 2.5 Should this not occur then it is considered the Trust will be in breach of its obligations under its charity responsibilities.

- 2.6 Not extend the contract with the external management contract and end it in December 2022. This would then require the Council to seek alternative representation through a new tender or bring the service inhouse. This approach could lead instability to the management of the lettings as the Council does not currently have adequate inhouse resources to effectively manage the tenants, in accordance with government legislation.

3 DETAILS OF THE REPORT

“Tenant A”:

- 3.1 “Tenant A” requires a new lease and have requested a variation from their previous lease arrangements, which are outlined in exempt Appendix 1.
- 3.2 The council’s legal department is working on a draft lease together with “Tenant A’s” solicitors, which had a contractual expiration date of 11 September 2021. The tenant brought the lease formally to an end on this date by virtue of serving a S.26 Request under the Landlord and Tenant Act 1954. Negotiations have been on-going since the serving of the S.26.
- 3.3 To ratify this new lease, the Board is requested to review the proposed terms for the new lease, which are detailed in exempt Appendix 1.
- 3.4 Should matters not be agreed then this will progress towards Court considerably increasing costs and uncertainty to the charity.

The “Tenant C”:

- 3.5 “Tenant C” have requested a review of their rent and a re-gear of their existing lease arrangements. Details of the options put forward by the “Tenant C” can be found in exempt Appendix 1.

“Tenant B”:

- 3.6 The Council is required to renew the lease with “Tenant B”. The new lease will be for a period of up to ten years but may be less depending on negotiations.

“Tenant D”:

- 3.7 Asset Management’s external management agent has issued a series of Section 146 notices to a tenant located in the Green Bridge retail estate. These breaches relate to failure to pay rent and service charges in full and statutory compliancy issues.
- 3.8 As part of the S.146 Notice, the leaseholder is afforded a reasonable time to remedy the breach. Should this not occur then the next step will be to initiate Court proceedings.
- 3.9 It is considered the ongoing compliance issues are a health and safety risk to the other tenants and the tenant has received multiple notices about this from

not only council officers, but also the external agents. They have been given every opportunity to resolve matters and improve but have noticeably failed to do so. The tenant is also in arrears, and this deprives the Charity of funds to undertake its remit.

- 3.10 Should matters continue then to seek possession and remarket the unit is considered the only option under the Charity's responsibilities, with the associated costs and risk involved. However, it is considered a good location and would readily be re-let.

Extension of the current Management Services Contract:

- 3.11 The current Contractor was awarded, through a tender process, a management services contract for Mile End Road Shops and Ben Jonson Road North Shops, also known as Retail Units 1-16, 41-73 Ben Jonson Road, London, E1 4SA.
- 3.12 The Council appointed the Contractor for the provision of Estate Management Services including a treasury function in accordance with the request for Quotation issued on 18 November 2020. An external party was appointed due to a lack of adequate resources and appropriate facilities required to carry out the functions of services charges in accordance with government legislation.
- 3.13 The contract covers two areas under separate administrative ownership. Mile End Road Shops under the ownership of the King George's Field Trust and Ben Jonson Road North under the ownership of Housing Revenue Account.
- 3.14 The term of the contract is 24 months with the option for a 12-month extension. The current contract is with effect from 1 January 2021 and will terminate on 31 December 2022 if the option to extend is not taken up.
- 3.15 A number of years ago, the Council decided to tender out the management of these estates to an external management agent in order to minimise the staffing resources required from the Council and associated costs of inhouse management. Previous incumbents have included Strettons and GVA (latterly known as Avison Young).
- 3.16 The costs for the services provided by the Contractor are largely off-set by the service charges that are applied to each of the leases, which is standard practice. The costs for their services are included in exempt Appendix 1. It is likely that the Council would need to charge a higher service charge to cover internal staffing resources than those levied by a management agency who have economies of scale. Given the current cost of living and energy crisis, which will impact on commercial lettings, it is unlikely that the market would sustain higher service charges. At present each lease is charged based on their square meterage to ensure equity and transparency.
- 3.17 The outsource also provides additional accountability, with regular meetings arranged with the agent. This also enables them to provide additional tactical advice gleaned from other portfolios they are managing.

- 3.18 It should be noted that the Contractor has met their contract requirements and their performance has met expectation.
- 3.19 It is recommended allowing the contract to be extended by a further 12 month period, and to conclude the full 2+1 years of the term. Should the contract not be extended then the realistic option would be to bring the management inhouse, and this will require the necessity of hiring an additional staff member to deal with the extra work.
- 3.20 On the basis that a full-time member of staff can be identified, it is likely they would need to be at Grade M level at a cost of £54,513 plus add ons. However, there has been difficulty in filling a permanent role, and an interim surveyor would likely need to be employed, with the costs to the Council being closer to £90,000.
- 3.21 Given the potential costs of bringing any management inhouse and the current market conditions, it may be advisable to continue to use a management agent to manage King George's Fields Trust and the Council sites at Ben Jonson Road North. Should this be the preferred option, then it would be beneficial to keep Carter Jonas in contract until December 2023 (i.e. for the full term of the contract) rather than end the contact in December 2022, to give sufficient time to ensure a smooth transition.

4 EQUALITIES IMPLICATIONS

- 4.1 The King George's Field Trust manages lands and facilities which are open to all. Where charges have to be made, such as artificial football pitches, charges are kept at affordable levels for the local community.

5 OTHER STATUTORY IMPLICATIONS

- 5.1 The lease renewal is a statutory matter under the Landlord and Tenant Act 1954, with the tenant entitled to a new lease on market terms.
- 5.2 The Section 146 Notice is served under the Law and Property Act 1925.

6 COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report seeks approval to grant authority to the Corporate Director of Children and Culture and the Corporate Director for Place to enter into and conclude the renewal of the lease with "Tenants designated A and B", to authorise the re-gear of the lease with "Tenant C". Furthermore, the report has asked the Board to note the update provided in exempt Appendix 1 regarding lease breaches by "Tenant D" and authorise the Corporate Director of Children and Culture and the Corporate Director for Place to take forfeiture action against these breaches if they are not resolved. Finally, approval is sought to grant an optional one-year extension with the external management Contractor to continue to oversee letting management arrangements on behalf of the Council and KGFT and to authorise the Chair of King George's Fields Trust to review Lease Agreements on behalf of the Board.

- 6.2 Negotiations are on-going between Tenant A and the charity representatives on the new lease contract with no break clause with a rent chargeable of between £50k and £57.5k. The charity is working with the legal representatives of Tenant A to agree the lease agreement and to avoid court costs which could be between £20k and £30k. The rent agreed will be dated back to September 2021. This implies a reduction in charity's rental income of between £12.9k and £24.9k depending on the outcome of rent agreed. Rent payments will be switched to monthly and changes to opening hours already agreed.
- 6.3 Tenant B has asked for a one-off rent relief of £21,415 which equates to four (4) months' rent.
- 6.4 The impact of actions in paragraphs 6.2 and 6.3 above will cause a reduction in Charity's rental income between £34.3k and £46.3k. With the charity's latest financial forecast being a surplus of £42.5k, the impact of the rent reductions depending on rent agreed may swing from a surplus of £8.2k to a deficit of £3.8k in the financial year 2022/23.
- 6.5 A reversionary lease which takes effect from April 2023 with no break clause is being negotiated with Tenant C whose rent review is due in 2026. The options available are a reversionary lease contract until 31st March 2031 and 31st March 2036 with a six (6) and twelve (12) months' rent-free period which equates to £56.7k and £113.5k respectively. In order to lessen the impact to the charity's finances, the rent losses will be spread over two (2) years. The charity may opt not to enter into a reversionary lease contract however, it would have to deal with the impact of adverse market movement which would have been secured had the reversionary lease contract been secured.
- 6.6 If the charity decides to enter into a reversionary lease contract, the rent-free period over two years would also put pressure on the charity finances.
- 6.7 Tenant D has breached its lease agreement financially and in other respects. The current arrears exclusive of VAT is £37.3k. Should the process to forfeit the lease of the tenant go to court, additional costs will be incurred which with the arrears will apply further pressure on the charity's finances.
- 6.8 Carter Jonas is the management company for both Green bridge and new Ben Johnson Road shops/retail units at an annual cost of £19.5k. If this service is brought in house, it would cost the charity about £144k. Since their services have been satisfactory, it is recommended that their contract should be extended, and Finance concurs with this recommendation.

7 COMMENTS OF LEGAL SERVICES

- 7.1 The London Borough of Tower Hamlets is the corporate trustee of the King George's Field Trust ("the Charity"). Decisions of the Council as trustee are made by the King George Trust Board. When Councillors are sitting as Board members they must act in the Charity's best interests and manage the

Charity's resources responsibly and ensure that the Charity complies with its legal obligations.

- 7.2 Before granting a lease for 7 years or more, the charity trustee must obtain and consider a written report on the proposed lease from a qualified surveyor, who must be a member of the RICS and have experience in the relevant area.
- 7.3 The trustees must then decide that they are satisfied (having considered the surveyor's report) that the terms of the lease are the best that can be reasonably obtained.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Appendix 1 (exempt) - Rental Concession Recommendations Green Bridge Retail Units
- Appendix2 Public Benefit Guidance

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

Officer contact details for documents:

Catherine Boyd, Head of Arts Parks and Events