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Date: *29 August 2013*

NOTIFICATION OF PORTFOLIO HOLDER DECISION

On 28 August 2013, Cllr C A Wise, the Finance and Efficiency Portfolio Holder, made the following decision. Any member of the Council, who is not a Portfolio Holder, who considers that this decision should be reviewed should give notice to the Monitoring Officer (Grainne O'Rourke) (in writing or by e-mail) to be received **ON OR BY 5.15 P.M. ON THURSDAY, 5 SEPTEMBER 2013.**

Details of the documents the Portfolio Holder considered are attached.

DECISION: Disposal of freehold interest in land at Earley Court, High Street, Lymington

REASONS: Set out in report.

ANY ALTERNATIVE OPTIONS CONSIDERED AND REJECTED: None

CONFLICTS OF INTEREST DECLARED: None

For Further Information Please Contact:

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EARLEY COURT, HIGH STREET, LYMINGTON - DISPOSAL

1. Introduction

In 2010 Earley Court Management Company asked to purchase the Council's freehold interest at Earley Court, High Street, Lyminster. This report sets out the background to that request and the subsequent negotiations and recommended that the Council sells its freehold interest in Earley Court.

2. Background

The District Council owns the freehold of the land upon which Earley Court shopping precinct was built in the early 1970's. The precinct comprises 9 lock up shops on the ground floor and 4 residential flats above at first floor level.

In 1971 the Council granted a 99 year ground lease to Earley Court (Lyminster) Management Limited who built the precinct and in turn granted subleases for the shops and flats. The ground lease has a remaining term of 56 years calculated from the start of the term of the lease (September 1970). The ground rent currently received by the Council is £1050 per annum. The lease contains agreements for the review of the ground rent every 15 years but the ground rent has not been reviewed since the lease was granted.

3. Purchase request.

The tenant has put forward a number of reasons to negotiate the purchase of the freehold of Earley Court;

- With less than 60 years remaining on the lease the sale of subleases within the property is becoming more difficult. This in turn is having an impact of the maintenance regime exercised by the tenants and the premises are becoming tired and dated.
- The Management Company tenant has disputed the operation of the rent review clause and has argued that it is ineffective. This is not accepted by the District Council.
- A sale of the freehold would produce a capital receipt to the District Council
- A sale of the freehold would motivate refurbishment of the premises.

In responding to the tenant's purchase request and rationale above the following has to be considered.

- Lease Term.

The issue regarding length of term remaining and difficulty letting units has some merit. The reducing term of years remaining will reduce both interest in the units and a potential purchaser's ability to secure lending. Over a period of years this will foster a reluctance to undertake works to the premises which are already looking tired and in need of updating. This is likely to become an increasingly significant problem in future years.

It should be recognised however that there are obligations within the lease that impose conditions as to repair and decoration of the buildings. However enforcement of the obligations may require litigation, with inherent risk, cost and delays, and in the meantime the condition of the premises could deteriorate further and continue to detract from the overall setting of the precinct within the Town.

- Rent review provision

The District Council does not accept the rent review clause cannot be operated and obtained a recent Counsel opinion which concluded that the rent review provision could be enforced. However the rent review clause is not straight forward and gives rise to a number of uncertainties.

The rent review should take place every 15 years from the start of the lease term, i.e. September 1985, 2000, 2015, 2030 and 2045. The rental review assessment in the lease is based on a formula where the ground rent is to be calculated with reference to (1) baseline of open market rents in 1974 and (2) the rent received by the tenant. This formula gives rise to two difficulties;

Firstly establishing the market rent as at 1974 levels. Although it would be difficult to establish what the base rent was in 1974 it would not be impossible. However if the base rent could not be agreed by the parties it would have to be determined by an arbitrator with uncertainty as to the outcome.

Secondly; the other factor in the calculation of the ground rent, is the passing rent receivable by the tenant at each rent review date less certain costs and fees. As some of the tenant's stakeholders are in owner occupation of part of the premises a number of the units do not attract a passing rent, which may diminish the value of the ground rent on review.

While Counsel's advice is that the rent review clause could be exercised the likelihood is that the tenant is unlikely to co-operate and agree a rent review. The District Council would have to refer the matter to arbitration which is costly and time consuming and the outcome is not predictable.

4. Freehold Market Value.

A number of valuation scenarios present themselves depending upon the view taken on the value of the rent review covenant.

The initial offer for the purchase of the Council's freehold interest from the tenant was £100,000. Assuming that there were no difficulties in concluding a rent review and the premises attracted a fair and reasonable ground rent, the Council's freehold land interest is valued in the region of £260,000. However it must be stressed this value is based on a settled and up to date ground rent, on modern lease terms and with the premises being in good repair and up to date.

In addition the tenant's purchase of the freehold might improve the prospects of Earley Court being re-developed or the freehold being sold and the Council may secure additional value in those circumstances.

5. Proposed settlement

Following extensive negotiations with Earley Court Management they have increased their offer for the Council's freehold interest to £230,000. In addition they have committed to carrying out significant refurbishment works to the premises, the cost of which is estimated to be £70,000. Furthermore the tenant has accepted that any sale will be subject to a "Claw-back" provision entitling the Council to 50% of any net value realised on the re-development of Earley Court should planning consent be granted for redevelopment, or on the sale of the freehold at any time in the next 20 years. Overall this is considered to represent a fair and reasonable offer. In addition, there would be the standard sale terms included in any disposal.

6. Recommendation

It is recommended that the Council sells the freehold interest in land at Earley Court to Earley Court (Lymington) Management Limited on the terms set out in paragraph 5 above and that the Executive Director concludes the sale on the basis set out above.

I agree with the recommendation

CLLR C A WISE

Councillor Colin Wise
Portfolio Holder for Finance and Efficiency

Date;

28 AUGUST 2013

Date Notice of Decision Give:

29 AUGUST 2013

Last Date for Call In:

5 SEPTEMBER 2013