

Subject:	Lease surrender – Oakley Motor Units Ltd, Oakley House, Edward St, Brighton		
Date of meeting:	10 October 2019		
Report of:	Executive Director Neighbourhoods, Communities & Housing		
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Ward(s) affected:	Queen's Park		

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1. This report seeks authorisation for the Executive Director Neighbourhoods, Communities & Housing, and the Head of Legal Services to use their delegated powers set out under Part 6.2 Part A (General Delegations), paragraph 3.2 (d) of the Councils Scheme of Delegations to accept surrender of a lease. The leaseholder is Oakley Motor Units Ltd, Oakley House, Edward Street, Brighton, BN2 0BA. The lease is for commercial premises situated beneath six Housing Revenue Account general needs council housing flats. The executive officers will negotiate the surrender on the main terms identified in the body of this report.
- 1.2 The lease surrender enables the council to regain full possession of its land and property, and for the ownership to pass to Housing. The leaseholder has also requested transferring his lease to a third party, which will mean the council will not be able to realise any potential use options of its own for up to 53 years.
- 1.3 The leaseholder is seeking a timely response from the Council.

2. RECOMMENDATION

That Policy & Resources Committee:

- 2.1 Agrees to the lease surrender for the agreed lease premium detailed in the Part 2 report, and authorises that delegated powers be given to the Executive Director Neighbourhoods, Communities & Housing, and the Head of Legal Services to agree terms.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Oakley Motor Units comprises a split level unit, with a ground floor showroom, upper level stores and workshop, and basement stores. The property has been used as a showroom for outboard engines; and was formerly a car dealership.
- 3.2 The freehold, which also contains six Housing Revenue Account (HRA) general needs council flats on the upper levels, is owned by the Council. Approximately 536 sqm or 5,773 sq ft within the building, as well as space for parking four to five cars at the rear of the building, is let to Oakley Motor Units Ltd under a ground lease dated in 1973 for a term of 99 years. The lease expires in 2072. It is let at a ground rent fee paid to the Council's General Fund.
- 3.3 Oakley Motor Units Ltd wishes to surrender the lease for a premium to be paid by the council. This would provide the opportunity for the Council to have returned to its full possession gain a site for consideration of its future use 53 years before the lease expires. Alternatively, Oakley Motors Units Ltd have also expressed an interest in the council relaxing part of its lease covenant to enable the lease to be passed to a third party.
- 3.4 Subject to the approval of this committee to delegate authority to the Executive Director of Neighbourhoods, Communities & Housing and Head of Legal Services to negotiate the lease surrender, the main terms to be agreed with Oakley Motor Units Ltd are:
- (i) The parties agree to enter into an "Agreement to Surrender", and to exchange contracts as soon as possible for an early completion date
 - (ii) The full and final surrender premium of £xxx (an amount to be negotiated) will be paid to the tenant, Oakley Motor Units Ltd, on completion of the surrender
 - (iii) The premises will be returned to the landlord, Brighton & Hove City Council, with only agreed Tenant's fixtures and fittings removed
 - (vi) There will be no dilapidations liability or condition to reinstate the premises provided the property has not deteriorated beyond the standard evidenced by a schedule of condition dated xxxx.
- 3.5 The Council is able to fund the lease surrender premium and arising revenue costs including for electricity, water, maintenance and security from existing HRA budgets. Any proposals for the future use of the site will go to Housing Committee and then return to this committee for consideration; and officers are considering options for 'meanwhile use' of the vacated space – subject to suitability with regard to the residential dwellings above.

4. ANALYSIS & CONSIDERATION OF ANY OPTIONS

- 4.1 **Option 1:** Not proceed with taking a surrender of the leasehold interest. This would maintain the revenue income of £10,000 a year, and avoid the revenue costs of holding the property vacant.

This option would delay any Council future use opportunity until the lease expires in 53 years, unless a deal to surrender the lease was agreed with the new tenant. Any refusal from the Council may also cause reputational damage among the

commercial sector with whom the Council is keen to maintain its strong symbiotic relationships.

- 4.2 **Option 2:** Agree that Oakley Motor Units Ltd try to assign their lease to another tenant. They do have a reasonable prospect of doing this, given that 53 years of the lease is remaining. A new tenant may themselves request that the council vary the lease and relax any restrictive covenants within it.

As with Option 1, this option limits the Council's own future opportunities.

- 4.3 **Option 3:** Agree to the surrender of the lease, and consider options for the use of the site following stakeholder consultation and relevant committee approvals.

This option avoids the lease being transferred to a third party, and provides a useful site for the Council to make use of as a social asset.

- 4.4 With regard to Option 3, initial financial appraisal of the site deems that it provides good value for money for the HRA to purchase the leasehold of the commercial units. Initial pre-planning feedback is positive regarding potential future use as a commercial site and/or providing additional council homes.

- 4.5 The decision to accept the lease surrender is separate to the future use of the site. Any proposals, if returned to the Council, will go to the relevant committees.

5. **COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 There is no requirement for community consultation in relation to the proposals of this report. Any future plans for the site, if surrender is agreed, will be subject to full stakeholder consultation, particularly with the residents of Oakley House.

6. **CONCLUSION**

- 6.1 A decision to accept the lease surrender is advantageous to the Council in that it enables the premises in question to be brought back into full Council ownership.

7. **FINANCIAL & OTHER IMPLICATIONS:**

- 7.1 Financial Implications:

If the recommendation is approved by Policy & Resources Committee the budget for the agreed surrender premium will be found from the HRA. While the future use of the site is being considered, the financing costs will be managed within the existing financing costs budgets.

Once purchased, the site will be owned and managed by the HRA.

Purchasing the lease results in a loss of income to the General Fund of £10,000 per annum. This will need to be managed within the General Funds commercial portfolio in future years.

Finance Officer Consulted: Craig Garoghan

Date: 25/09/19

7.2 Legal Implications:

With reference to recommendation 2.1, the surrender of a lease by a tenant to its immediate landlord is a consensual arrangement between the landlord and the tenant. The Council's tenant is willing to surrender its lease for a premium and paragraph 3 of this report explains why it is in the interest of the Council to accept the surrender.

Lawyer Consulted: Joanne Dougnaglo

Date: 27/08/19

7.3 Equalities Implications:

There are no immediate equality implications arising from this report.

7.4 Sustainability Implications:

There are no immediate sustainability implications arising from this report.

7.5 Public Health Implications:

There are no direct public health implications arising from this report.

7.6 Crime & Disorder Implications:

There are no crime and disorder implications directly arising from this report

7.7 Risk and Opportunity Management Implications:

The Council regaining ownership of this site provides opportunities that supports the council's priorities for the economy, jobs and homes.

7.8 Corporate / Citywide Implications:

Please see paragraph 7.7 above.

SUPPORTING DOCUMENTATION

Appendices

Appendix 1: Part 2 paper

Documents in Members' Rooms

None

Background Documents

None