

**Report of :** Head of Property Services

**Report to :** Chief Asset Management and Regeneration Officer and Interim Chief Officer Property and Contracts

**Date:** 28 July 2014

**Subject:** Land and premises at Armley Ridge Road, Armley– The Ancestor Public House

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	Armley	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:	10.4(3)	
Appendix number:	1	

### Summary of main issues

1. The subject site is held from the Council by way of a ground lease originally granted for the purpose of the construction of the public house.
2. The public house has been closed for a number of years and is in a poor condition. The property has been included in the Council's Derelict and Nuisance Properties Programme.
3. The site has been identified for residential development and was incorporated in the list of sites forming the Council's approved Housing Investment Land Strategy ( HILS )
4. An opportunity has arisen for the Council to acquire the ground lease with a view to securing vacant possession of the site in order facilitate the development of affordable housing. Demolition is proposed to be undertaken by the Council as soon as possible after completion of the acquisition.
- 5 An offer has been made to the Council's tenant and which has been accepted.

### Recommendations

6. It is recommended that approval be granted to the following:-

- i) The terms provisionally agreed between the Council and its tenant for the acquisition of the ground lease, as detailed in the attached confidential appendix.
  - ii) That the funding for the acquisition be met from the Council's Housing Revenue Account (HRA) with appropriate budget reimbursement arrangements to be agreed in the event of the sale of the site for affordable housing.
  - iii) That the funding for the demolition be met from the Council's Derelicts and Nuisance Properties programme budget, again with appropriate reimbursement arrangements to be agreed. Specific approval to this expenditure shall be sought by way of a separate Design and Cost Report.
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## **1 Purpose of this report**

1.1 The purpose of this report is:-

- a) To advise as to both the current issues arising and the negotiations recently undertaken with the tenant to acquire their leasehold interest.
- b) To seek approval to the terms provisionally agreed between the Council and its tenant for the acquisition of the ground lease and for the funding for the acquisition to be met from the Council's Housing Revenue Account ( HRA).
- c) To advise in respect of the proposal that the cost of the demolition be met from the Council's Derelict and Nuisance Property programme.

## **2 Background information**

- 2.1 The subject site is identified on the attached plan and comprises of a closed public house with external parking area. The site extends to approximately 0.75 acres. It is held from the Council by a ground lease, the terms of which are detailed in the attached confidential appendix. The Council's tenant is Bondwell Properties Ltd.
- 2.2 In 2011, derelict and eyesore buildings and sites were identified as one of the key issues facing local communities across the city. In response, the Council established a Derelict and Nuisance Property Programme. This site was included and remains in the programme. The public house has been closed for in excess of three years.
- 2.3 On 23 December 2011 the Director of Environments and Housing approved a report recommending that the subject property be declared surplus to the requirements of Environments and Housing, with a view to the Council entering into a joint disposal agreement with the tenant.
- 2.4 Negotiations were undertaken between Asset Management and the leaseholder's original agent during 2012 with a view to entering into a joint disposal agreement. This would facilitate vacant possession for any potential purchaser of the Council's freehold interest. Despite terms being agreed and approved, a legal agreement was never concluded due to a change in the leaseholder's financial circumstances and therefore no joint marketing took place. However, the tenant continued to market its leasehold interest.
- 2.5 In the meantime, a decision was taken to include this site in the Council's Housing Investment Land Strategy ( HILS ), within the schedule of sites to be offered only to

Registered Providers of affordable housing. HILS was approved by Executive Board in July 2013, including this site.

### **3 Main issues**

- 3.1 Reflecting the sites inclusion in HILS, an Expressions of Interest exercise ( EOI ) was undertaken with Registered Providers of affordable housing and a number of EOIs were received. Those Registered Providers who submitted an EOI were then asked to present final draft scheme proposals and to make financial offers for the freehold by way of an informal tender exercise. A number of offers and final schemes were received. The marketing exercise was undertaken with the full knowledge of all interested parties that, a position had not been secured in terms of the Council acquiring the ground lease. In particular, that, a guarantee of vacant possession upon completion of any sale of the freehold could not be offered.
- 3.2 The financial position of the tenant became such that a new agent ( CBRE ) was appointed with a remit to sell the ground lease at the earliest opportunity.
- 3.3 The new agent was advised of the Council's proposed marketing exercise with the Registered Providers and a split of potential receipt was tentatively agreed with the agent in order to facilitate the surrender of the lease on a sale and thereby vacant possession being provided. The discussions reflected the negotiations with the previous agent referred to above.
- 3.4 The agent was advised of the level of interest and the offers received from Registered Providers and the likely timescales for a sale, reflecting that the offers were conditional upon planning permission. The agent advised that he had received offers to acquire the lease and given the relative level of the offers from the Registered Providers and associated timescales for completion, he could not recommend working with the Council and would have to pursue the offers received.
- 3.5 Asset Management enquired of the tenant's agent as to whether the tenant would consider a sale of the lease to the Council. The agent advised that this could be considered and has subsequently invited the Council to make an offer.
- 3.6 The opportunity to acquire the leasehold interest would give the Council control over the future of the site. It would allow for an early solution to the building via demolition and allow for vacant possession to be offered to Registered Providers.
- 3.7 With regard to the offers received by the Registered Providers, the interested parties were advised of the circumstances in relation to the lease and as a consequence withdrew their interest and did not include the site in their respective bids to the Homes and Community Agency ( HCA ) . Asset Management (Regeneration) have advised that a further funding round from the HCA is likely to happen sooner than had been anticipated. It is therefore considered that there remains the option of a future sale of the site to a Registered Provider.
- 3.8 With the approval of the Chief Asset Management and Regeneration Officer, negotiations were entered into with the tenant's agent for the acquisition of the lease and terms have been provisionally agreed and which are detailed in the confidential appendix.
- 3.9 It is proposed that the acquisition be funded by the Council's HRA. The HRA can be used to acquire interests in property where the Council intends to either directly build Council houses or a sale to a Registered Provider is proposed for development of affordable housing, which is the anticipated course of action for this

site reflecting its status in HILS. In the event of a sale to a Registered Provider, the intention is to reimburse the HRA for the full sum expended to acquire the lease.

3.10 There are two instances within the last year of HRA funding being approved to acquire the ground leases of Council owned public house sites, both of which were also included in the Derelict and Nuisance property programme. The sites are the Squinting Cat and the Whinmoor Public Houses, both in Swarcliffe in East Leeds.

3.11 The use of the Derelict and Nuisance programme budget to meet the demolition cost is considered appropriate as it will ease the cash flow risk to the HRA in terms of achieving reimbursement from a sale to a Registered Provider. Specific approval to this expenditure shall be sought by way of a separate Design and Cost Report.

3.12 However, it is further considered that in view of the level of interest and offers received in response to the EOI exercise referred to above, there is a high likelihood of the Council being able to recover the combined cost of acquisition and demolition. Further commentary on this issue and associated figures are included in the confidential appendix.

### 3.13 **Options Appraisal**

#### 1. **Option 1 – Do nothing**

This is not considered to be an option. If the Council wishes to deliver affordable housing on this site and deal with the problem of the building then decisive action to acquire the lease must be taken now.

#### 2. **Option 2 - Pursue negotiations for a joint disposal agreement as originally considered**

This is not recommended given the tenant's requirement for an early sale of its lease, which conflicts with timescales associated with a Registered Provider securing planning permission.

#### 3. **Option 3 - Approve the terms provisionally agreed to acquire the lease and that funding for the acquisition to be met by the HRA. Subsequent early demolition with funding from the Derelicts and Nuisance Programme.**

This is recommended as it represents an opportunity to achieve both an early resolution to the immediate issue of the building and to give greater surety that housing can be delivered on the site.

## 4 **Corporate Considerations**

### 4.1 **Consultation and Engagement**

4.1.1 Ward members were originally consulted when the site was originally declared surplus and were supportive of the sale of the site. Members were subsequently consulted in respect of inclusion in the HILS and were again supportive.

4.1.2 Ward members have been advised in respect of the proposed course of action.

4.1.3 The Executive Member for Neighbourhoods, Planning and Support Services has been consulted in respect of the proposed and is supportive of the proposal to acquire via HRA.

4.1.4 The Executive Member for Transport and the Economy has been consulted and has indicated that he is comfortable with the proposal.

## **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 There are considered to be no equality and diversity / cohesion and integration issues arising.

## **4.3 Council Policies and City Priorities**

4.3.1 This is a priority site on the Council's Derelict and Nuisance Property Programme. The provision of additional sites for housing is also a Council priority reflected in this site's inclusion in HILS.

## **4.4 Resources and Value for Money**

4.4.1 The proposal to acquire the lease and demolish, whilst having an upfront acquisition cost to the Council, along with the loss of a nominal annual ground rent, offers the opportunity to achieve an early resolution to issues reflecting the priorities of the Council. From the interest recently expressed in the site it is considered that the proposed acquisition and demolition costs could be recovered in the event of the sale of the site to a Registered Provider.

4.4.2 Environments and Housing's Capital Finance Manager has confirmed that the HRA can only be used to acquire a leasehold interest where it proposed that, either, the Council intends to build social housing on the subject site or to sell it to a Registered Provider for development of social housing.

## **4.5 Legal Implications, Access to Information and Call In**

4.5.1 Under Part 3 Section 3E Paragraph 2(a) of the Council's Constitution (Officer Delegation Scheme (Executive Functions)) the Director of City Development has authority to discharge any function of Executive Board in relation to the management of land (including valuation, acquisition, appropriation, disposal and any other dealings with land or any interest in land) and Asset Management.

4.5.2 The Chief Asset Management and Regeneration Officer has authority to take the decisions requested in this report under Executive functions 1 and 10 (specific to the Director of City Development) of the Director of City Development's sub delegation scheme.

4.5.3 The proposal constitutes a significant operational decision and is therefore not subject to call in.

4.5.4 The Head of Land and Property confirms that in his opinion the terms agreed represent a fair value for the purchase of the property.

4.5.5 The information contained in the Appendix to this report relates to the financial or business affairs of a particular person, and of the Council. This information is not publicly available from the statutory registers of information kept in relation to certain companies and charities. It is considered that since this information was obtained through one to one negotiations for the purchase of the land/property referred to then it is not in the public interest to disclose this information at this point in time. Also the release of such information would or would be likely to prejudice the Council's commercial interests in relation to and undermine its attempts to acquire by agreement similar properties in the locality in that owners of other similar

properties would be aware about the nature and level of consideration which may prove acceptable to the Council. It is considered that whilst there may be a public interest in disclosure, much of this information will be available from the Land Registry following completion of the purchase and consequently the public interest in maintaining the exemption outweighs the public interest in disclosing this information at this point in time. It is therefore considered that this element of the report should be treated as exempt under rule 10.4.(3) of the Access to Information Procedure Rules.

## **4.6 Risk Management**

4.6.1 It is considered that if the recommended course of action is not pursued then there is a high risk of the current leaseholder disposing of its interest to another party. This is likely to mean the continued deterioration of the building and its associated impact on the immediate community. It would also mean the loss of an opportunity to take control of the site to deal with the building and to bring forward an additional site that has been identified for affordable housing.

4.6.2 There is the risk that a sale may not be achieved after acquisition and the respective budgets are not reimbursed. There is no absolute guarantee of a sale but, given the level of interest received in response to the EOI exercise referred to above, there is considered to be a very good chance of the site being sold at a satisfactory price.

## **5 Conclusions**

5.1 The proposal should be approved as it is considered to be the most effective approach to dealing with the issues facing this site.

## **6 Recommendations**

6.1 It is recommended that approval be granted to the following :-

- i) The terms provisionally agreed between the Council and its tenant for the acquisition of the ground lease, as detailed in the attached confidential appendix.
- ii) That the funding for the acquisition be met from the Council's Housing Revenue Account (HRA) with appropriate budget reimbursement arrangements to be agreed in the event of the sale of the site for affordable housing.
- iii) That the funding for the demolition be met from the Council's Derelict and Nuisance Properties programme budget, again with appropriate reimbursement arrangements to be agreed. Specific approval to this expenditure shall be sought by way of a separate Design and Cost Report.

## **7 Background documents<sup>1</sup>**

7.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.