

Report of : Head of Property Services

Report to : Acting Chief Asset Management Officer

Date: 24 September 2012

**Subject: PROPOSED LEASE IN AND PARTNERING ARRANGEMENT,
SHOPMOBILITY, UNITS 74 AND 94/96 MERRION CENTRE, LEEDS**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	City and Hunslet	
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 Council have operated a Shopmobility service (hire of mobility scooters and related aids) from Unit 92, Merrion Centre since 1992.
2. Adult Social Care have been seeking ways to reduce the costs of this in order to allow the service to be continued in the future within budget limitations.
3. At the same time the Council's lease on the unit from which the service is operated is to end and alternative premises are therefore needed.
4. Asset Management Board in April 2012 considered proposals to look at options for new premises within the Merrion Centre in conjunction with the operation of the service with an external provider.
5. Negotiations have been undertaken and terms provisionally agreed, as set out in the confidential appendix of this report.

RECOMMENDATION

6. That approval be granted to the terms provisionally agreed for leases in of the premises set out in the report with sub leases to the named external partner in conjunction with appropriate service level agreements.

1 **Purpose of this report**

1.1 The purpose of this report is to seek approval to:

- a) The terms provisionally agreed for leases in of premises in the Merrion Centre,
- b) The terms provisionally agreed for subleases of units in the Merrion Centre in conjunction with a service level agreement with the chosen external provider to run / staff the Shopmobility service alongside the retailing of its own mobility aids.
- c) A surrender of the Council's existing Shopmobility Unit.

2 **Background Information**

2.1 The Council's Adult Social Care Department (ASC) have operated a Shopmobility (scooter and mobility aids hire) service from the Merrion Centre since 1992. This has proved very popular and continues to be well patronised.

2.2 However due to budget limitations ASC decided it would struggle to run the service in the future unless savings could be made. The main costs involved are staffing and property.

2.3 At the same time Town Centre Securities (TCS) decided to invoke the break clause on the Council's existing Unit (92) as they require this as part of their ongoing redevelopment of the centre and adjoining Arena project.

2.4 It was therefore decided that a partnership arrangement with an external provider would be the best way to provide the service and, following an earlier abortive procurement exercise, a direct approach was made to the external partner named in the confidential appendix.

2.5 On April 2012 Asset Management Board agreed to officers pursuing negotiations and agreeing, in principle, terms for leases / subleases of new premises with terms being reported back to The Acting Chief Asset Management Officer for approval in due course.

2.6 The partner has provisionally agreed to run and staff the Shopmobility service and cover some of the property outgoings in return for the Council covering the rent and business rates costs on the units. This proposal results in substantial budget savings to the Council through cost sharing compared to running the service in isolation (in house). Full details of the costs are set out in the confidential appendix.

2.7 TCS have worked with the Council to identify alternative premises - a retail unit, no. 74, and a store / charging area for the scooter fleet in unit 94/96 (part of a former public house). It is felt that these units would adequately cover the accommodation needs of the service, including a retail element to appeal to the proposed external partner, whilst being flexible enough (break clauses) to enable the Council to walk away from the liabilities if future funding of the service became an issue.

- 2.8 TCS have also recognised the Council's budget restrictions and offered a combination of nil rent on unit 94/96, and concessionary rent (phased arrangement) on unit 74. Additionally they are prepared to take a view on any dilapidations stemming from unit 92 bearing in mind this is to be redeveloped in any case.
- 2.9 At the same time various alternative properties (outside the Merrion Centre) were considered by officers although these were ruled out due to a combination of location, accessibility and cost issues.
- 2.10 In conjunction with the above, provisional agreement has been reached for sub leases of the units to the external partner along with a service level agreement to operate the Shopmobility service.
- 2.11 Full details of the proposed lease arrangements for the various units are set out in the confidential appendix.

3 **Main Issues**

- 3.1 Following the decision detailed in 2.5 above, negotiations were undertaken and terms have been provisionally agreed, as detailed in the confidential appendix. These incorporate:
- 3.2 Flexibility - via break clauses - in the event that the Council needs to reconsider the ongoing provision of this service in the future due to say, further budget restrictions, both the leases / subleases and service level agreement will incorporate clauses to allow the Council to cease the service and surrender the leases.
- 3.3 Cost savings – these will be achieved through the concessionary (phased / nil) rents agreed, the external partner picking up some of the new premises costs, TCS's view on not pursuing / limiting the dilapidations work on unit 92 and the staffing savings by the external partner managing the day to day operations of the Shopmobility service.
- 3.4 It should be noted that unit 92 was held on a concessionary rent basis (£7,000 pa) because it was always envisaged that this would be a temporary letting and would need to be terminated to allow TCS to redevelop this part of the Merrion Centre. As such this level of rent reduction is not being offered on the new units TCS are able to offer although a rent free / phased rent has been provisionally agreed as set out in the confidential appendix.
- 3.5 Works to the units – the alteration costs to the units are to be split between the Council and the partner on the basis set out in the appendix. The works include - (LCC) partitioning / charging points in unit 94/96, asbestos works / first floor works (inc w/c) to unit 74. (Partner) shop fit out in unit 74.
- 3.6 A term of 5 years is proposed to tie in with the service level agreement with the external partner.
- 3.7 There may be a need for unit 94/96 (the store) to be vacated at some time in the future (anticipated to be 18 months +/- hence) to allow TCS to further pursue the

development of the Merrion Centre although they have provided assurances that a suitable alternative unit will be provided. Failing this the Council may break the lease on unit 74 if needs be to avoid being left with an unworkable range of accommodation (retail outlet but no store) with a liability to pay rent.

- 3.8 Staffing issues affecting the proposed changes have been dealt with by ASC and have been set out and agreed in separate reports.
- 3.9 ASC have confirmed that adequate budget provision is in place to cover the costs to be incurred by the Council.

4 Options Appraisal

- 4.1.1 **Option 1 - Do nothing and vacate unit 92 without establishing the Shopmobility service elsewhere.** This is not recommended as a decision has previously been made at Asset Management Board and ASC's Panel to make efforts to find ways to continue the service in a cost effective manner.
- 4.1.2 **Option 2 - Approve the terms provisionally agreed for a partnership agreement in conjunction with leases in and subleases and proceed to now enter into appropriate contracts.**
- 4.1.3 **Option 3 – Reject the provisionally agreed terms, partner and service level agreement and seek to find a partner and accommodation on better terms than those achieved so far.** This option is not recommended as considerable officer time and effort has been spent in investigating and negotiating the best deals considered available to the Council at this time.
- 4.1.4 It is proposed that Option 2 be pursued for the reasons detailed in this report and its confidential appendix.

5 Corporate Considerations

5.1 Consultation and Engagement

- 5.1.1 Ward members have been informed of the proposed leases in / sub leases and partnership arrangement for the running of the service and have not registered any comments / objections.

5.2 Equality and Diversity / Cohesion and Integration

- 5.2.1 Equality, diversity, cohesion and integration issues have been taken into account at the earliest possible stage and an EIA screening tool was carried out on 29 March 2012.

5.3 Council Policies and City Priorities

- 5.3.1 The provision of accessibility to wider services links in with the Departmental Asset Management Plan.
- 5.3.2 Looking after Leeds – by ensuring that cost effective and affordable mobility services are made available to visitors to the City and that these are positioned in

the most convenient / accessible locations. The projected cost savings will also help the Council achieve the aims of year on year budget reductions for the provision of services as required under the Gershon Report.

5.3.3 Putting customers first – in this case the Council's customers are the disabled (mobility) community. The projected future running costs of the service indicated that its continuation, as an in house service, was not sustainable. The proposed external partnership of the service will hopefully ensure its future financial viability.

5.3.4 Treating People Fairly – by ensuring that an adequate range of affordable mobility services is available to those who need them.

5.4 **Resources and Value for Money**

5.4.1 The proposals benefit the Council by a number of cost saving measures including:

5.4.2 Staffing cost savings – achieved by the external partner's staff running the Council's Mobility service in conjunction with their own mobility aids retailing business.

5.4.3 Premises cost savings – which the Council would otherwise bear entirely itself if the service was run in isolation. The Council will bear the rental and business rate costs and the external partner will cover the other running costs including utilities, service charges etc.

5.4.4 The rent to be paid on the retail unit (74) includes a significant rent free period to help offset the costs of works and a stepped rent reaching the current market rent level after the third year.

5.4.5 Full details and costs are outlined in the confidential appendix.

5.4.6 It should be noted that the rent free basis upon which TCS is offering unit 94/96 (scooter store) would not have been offered on just the unit by itself. The arrangement is only available in conjunction with the lease of unit 74 (retail unit). In any case the limited area being offered (in unit 94/96) and the cost of conversion of a larger element of the pub for a combined store / retail area (note this option was not offered by TCS though) would not have been cost effective, either for the Council or in partnership with an external provider, as the unit could only ever be offered on a temporary basis as it forms part of the area to be redeveloped by TCS.

5.4.7 As part of the overall deal TCS are prepared to take a view on the dilapidations costs stemming from unit 92 and not pursue these (subject to the unit being left clean and tidy). However it is likely these would be limited in any case bearing in mind TCS's intention to redevelop this part of the site.

5.4.8 The existing fleet of scooters and wheelchairs are being given to the new provider, in their current condition and they will be used, maintained and scrapped by them. It is part of the service specification that they will increase the stock of mobility equipment for hire, at their own expense.

5.5 **Legal Implications, Access to information and Call in.**

- 5.5.1 Under Part 3 Section 3E Paragraph 2(a) of the Councils Constitution (Officer Delegation Scheme (Executive Functions)) the Director of City Development has authority to discharge any function of the Executive Board in relation to the management of land (including valuation, acquisition, appropriation, disposal and any other dealings with land or nay interest in land) and Asset Management.
- 5.5.2 The Acting Chief Asset Management Officer has authority to take the decisions 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.
- 5.5.3 This proposal constitutes an administrative decision and is therefore not subject to call in.
- 5.5.4 The Head of Property Services confirms that the letting of units to the service provider represents best consideration under Section 123 of the Local Government Act 1972 (or under the Housing Act 1985) on the basis that the overall cost savings to the Council of running the service in conjunction with an external partner outweigh the property costs which will be incurred and the general consents allow these overall scheme cost savings (over and above merely property costs) to be taken into account in deciding whether the Council is receiving best consideration or not.
- 5.5.5 The Head of Property Services confirms that in his opinion the terms offered to the Council represent a fair market rent for the property.
- 5.5.6 The information contained in the Appendix attached 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 respect of certain companies and charities. It is considered that since this information was obtained through one to one negotiations for the disposal of the property/land then it is not in the public interest to disclose this information at this point in time. Also it is considered that the release of such information would or would be likely to prejudice the Council's commercial interests in relation to other similar transactions in that prospective purchasers of other similar properties would have access to information 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 publicly available from the Land Registry following completion of this transaction 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.

5.6 **Risk Management**

- 5.6.1 ASC have carefully considered the likely ongoing demand for the service and concluded that this is likely to be sustained, at the very least, certainly for the proposed length of the service level / partnering agreement and leases ie 5 years.

The Council's continued investment in the service can therefore be justified on this basis.

- 5.6.2 The Council will incur costs to carry out works to both units 94/96 and 74. Whilst the lease to unit 74 has mutual breaks it is unlikely that TCS will invoke these. However unit 94/96 is likely to be required back by TCS in the next 18 mths or so and so the relatively small costs (compared to the overall project costs) involved in carrying out works to this unit will have to be written off rather than benefited from for the full 5 year term. Additionally further works (wiring for scooter charging systems etc) may be needed in any new 'store' unit offered to replace unit 94/96.
- 5.6.3 TCS cannot guarantee that an alternative store will be available in the event that they break the lease of unit 94/96. However they have stated that they will make all reasonable efforts to find suitable premises, failing which the Council may break the lease for unit 74 to avoid having to pay rent on a retail unit which, in isolation, provides unworkable accommodation for the service.
- 5.6.4 There is a risk to the Council as head lease holder in that any default / breach of covenant by the partner as sub tenant will involve the Council having to step in to deal with the issue thus possibly incurring costs in the process. However the Council is ensuring that the various leases / service level agreements afford it as much protection as possible by allowing it to break, take forfeiture action, pursue claims for damages / loss / costs etc as necessary. The Council has tried to mitigate the risk of this though by due diligence checks on the proposed partner and by contracting with the parent company (which Experian checks have indicated is a better risk than the sub company) and obtaining guarantees from them and seeking that they become a signatory to the leases.
- 5.6.5 Break clauses in leases (in the case of U74 at 18 and 36 mths), subleases and service level agreement will allow the Council to cease the service and walk away from the ongoing liabilities if it was no longer able to operate it, due to budget pressures or otherwise.
- 5.6.6 Note though that if the Council decides to break the lease for Unit 74 at the first break opportunity (18 mths) it must repay 6 months of the 9 months rent free period + VAT.
- 5.6.7 It should be noted that the mutual break provisions between TCS and the Council are at 18 and 36 mths. It is proposed that the service level agreement and sub leases to Simply Health will include (mutual) break provisions at 18, 36 and 48 months, the lease ending at 60mths (less a day).
- 5.6.8 There is a possibility therefore that the Council / Simply Health may choose to break the SLA and sublease at 48 months although the Council would continue to have a liability to pay the outgoings on the units for the remaining 12 months.
- 5.6.9 Additionally breaks by the Council or Simply Health at months 18 or 36 would need coordinating with breaks of the headlease by the Council if a decision was taken to minimise future costs and not seek to continue to run the service in house or with an alternative partner.

6 Conclusions

- 6.1 The proposal should be approved as it is considered to be the most cost effective and sustainable way of ensuring the continuation of the Shopmobility service.

7 Recommendations

- 7.1 That approval be granted to :

- a) The Council entering into leases with TCS for the units.
- b) The Council granting sub leases to the proposed partner or, in the event that the partner fails to enter into the agreements, another partner that ASC is able to find and which satisfies their requirements for providing the service, in conjunction with appropriate service level agreements.
- c) The Council surrendering its existing unit 92 in the Merrion Centre.

8 Background documents¹

- 8.1 None

¹ 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.