

Report No.

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: EXECUTIVE

Date: Wednesday 20th October 2021

Decision Type: Non-Urgent Executive Key

**Title: HOMEBASE UNIT, SEVENOAKS WAY INDUSTRIAL ESTATE,
ORPINGTON, BR5 3QD - LEASE EXTENSION**

Contact Officer: Amy Milton, Head of Estates & Asset Management
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Chief Officer: Director of Housing, Planning, Property and Regeneration

Ward: Cray Valley West

1. Reason for report

- 1.1 The Long Leasehold owner (L&G) of Sevenoaks Way Industrial Estate, Orpington, have approached the Council as Freeholder requesting to regear their lease.
 - 1.2 This report details the proposed terms of the lease regear and seeks Member approval to proceed with the transaction.

2. RECOMMENDATION(S)

- 2.1 Members are asked to agree to the lease regear of Sevenoaks Industrial Estate, Orpington, BR5 to the existing long leaseholder (Legal & General) as per the terms detailed within this report (Part 1 and Part 2).
 - 2.2 Authority to complete the transaction to be delegated to the Head of Estates & Asset Management, in consultation with the Director for Housing, Planning and Regeneration, with the Council's associated professional fees to be paid from the proceeds of the transaction.

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal:
 2. Ongoing costs:
 3. Budget head/performance centre:
 4. Total current budget for this head:
 5. Source of funding:
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Personnel

1. Number of staff (current and additional): Not applicable
 2. If from existing staff resources, number of staff hours: Not applicable
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Applicable
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Procurement

1. Summary of Procurement Implications: Not applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Not Applicable
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 The Council own the freehold interest of a site known as Homebase Unit, Sevenoaks Industrial Estate, Orpington, BR5 3HS.
- 3.2 Legal and General (L&G) own the long leasehold interest in the site, on a lease dated 5 July 1989 for a 125 year term, expiring 4 July 2114. L&G pay the Council a peppercorn for the leasehold interest.
- 3.3 Homebase occupy the site on an occupational lease from L&G, for a term of 15 years from 19th December 2020, with circa 14 years unexpired.
- 3.4 L&G have approached the Council to request a lease regear which would include the following amendments to the terms of their existing leasehold interest:
- A. Extend the leasehold term to 250 years (from circa 93 years unexpired)
 - B. Relax the existing user clause restriction which only allows 'Bulky Goods Retail' to extend to include food retail and industrial uses that fall within planning Use Class E* in addition to the existing use (existing user clause allows for bulky goods retail).
 - C. For change of use into B8 (storage and ancillary uses only) to be permitted with Landlord consent, not to be unreasonably withheld.
 - D. Removal of reference to restrictions on hours of trade and deliveries (currently the lease restricts Sunday trade to the hours of 11am – 5pm, and prohibits deliveries on Sunday's and Bank Holidays)
- 3.5 The financial premium to be paid to the Council by the leaseholder is detailed in the Part 2 report due to commercial sensitivities. The ground rent will remain at a Peppercorn.
- 3.6 *NB – Use Class E was introduced into Planning Policy on 1st September 2020 which includes a variety of commercial and retail uses under one planning designation which were previously separated. Specific uses that fall within Use Class E are interchangeable and do not require a planning permission.
- 3.7 For clarity, the proposed relaxation of the user clause will be limited to food retail and light industrial uses that fall within Use Class E (as well as the existing bulky goods retail use), but will not extend to all uses that fall within Use Class E.
- 3.8 It should be noted that planning permission would still be required for any alterations to the building that may be required to viably operate a different permissible use at the site.
- 3.9 The proposed lease re-gear will give L&G additional flexibility to optimise use of the site in the future and the additional lease length will give the certainty of tenure typically required to make investment into the site viable as and when it may be required.

Alternative Options Considered

- 3.10 Given the long leasehold interest that is already in place, there are limited alternative options for the Council to consider, but these are detailed below for completeness:

- **Do nothing** – the Council does not have to re-gear the lease. However, in taking this approach, the Council will forgo the capital receipt that will otherwise be paid by the long

leaseholder (as set out in Part 2 of this report). Given there is circa 93 years unexpired on L&Gs existing leasehold interest, the Council has no ability to dictate/control any decisions for the site's future in that period.

- **Delay the lease regear** – the Council could consider delaying the lease regear with the objective of achieving a stronger negotiating position as the leaseholder's term gets ever closer to expiry. There are a few reasons that this option has been discounted. Firstly, to be of benefit to the Council it would require the Council and leaseholder's timetables for reopening discussions to align as any regear would require mutual motivation to come to fruition. Secondly, as Part 2 of this paper will explain in more detail, the existing occupational lease on the site is considered to be achieving a higher than Market Rent level. This is of benefit to the Council presently as the Marriage Value calculation used to negotiate the premium L&G should pay for the lease regear takes into account this security of income. As the occupational lease gets closer to expiry, the benefit of this rental income will diminish and subsequently this will have a detrimental impact on one element of the Marriage Value calculation, reducing any net benefit to the Council's negotiating position from the increase in its Freehold interest value that would be gained through the reduction in unexpired term of the long leasehold interest. Therefore unless the delay was significant (which would stymie investment into the site), delaying the lease regear would introduce additional risk with minimal (if any) benefit.
- **Further negotiation** – the Council has taken professional advice on the negotiated terms of the lease regear to ensure the proposal represents Best Value and meets the Council's obligations under Section 123 of the Local Govt Act 1972. We are therefore confident that further negotiation would not yield better results for the Council.
- **Dispose of our freehold interest** – the value of the Council's existing freehold interest is limited due to the existing long leasehold in place. The obvious purchaser would be L&G who own the long leasehold interest. However, this would mean the Council loses all control over the site. It is unlikely that there would be a strong market for the freehold interest, outside of the Special Purchaser arena, due to the existing long leasehold which derives no investment value (peppercorn only) and with the residual value being deferred by c. 93 years. It would therefore not be in the Council's best interest to forgo the premium payable from the lease re-gear in favour of a minimal disposal receipt.

- 3.10 Officers have considered the alternative options and concluded that the proposed terms of the lease regear is the optimum strategy for the Council to pursue.

4 IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 4.1 There is not considered to be an impact on Vulnerable Adults and Children as a consequence of this decision.

5 POLICY IMPLICATIONS

- 5.1 N/A

6 FINANCIAL IMPLICATIONS

- 6.1 The proposed lease regear would result in a capital receipt payable to the Council. Further details are set out in Part 2.

LEGAL IMPLICATIONS

- 7.1 The Council has power under s.123 of the Local Government Act 1972 ("The Act") to dispose of land for the best consideration that can reasonably be obtained (usually based on open market value).
- 7.2 S.123 of the Local Government Act 1982 confers power to the Secretary of State to give general consent for the purposes of land disposals by local authority in Part 7 of the 1972 Act.
- 7.3 The Local Government Act 1972: General Disposal Consent 2003 removes the requirement to seek specific consent from the Secretary of State for any disposal of land where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the well-being criteria in the Local Government Act 2000:
- i) the promotion of improvement of economic well-being;
 - ii) the promotion of improvement of social well-being;
 - iii) the promotion of improvement of environmental well-being;
 - and the "under-value" (i.e., the difference between the unrestricted value of the interest to be disposed of and the consideration accepted) is £2,000,000 or less.
- 7.4 Applications for specific consent, if appropriate, should be sent to the DCLG and include the following information:
- Written description of the land and buildings, the location
 - Written description of how the land is currently held by the Council
 - Details of any leases, encumbrances such as easements
 - Summary of the proposed disposal/transaction
 - Detailed valuation report signed by a qualified member of RICS. Ideally valuation should be done no earlier than 6 months before application for consent.
- 7.5 This only applies to land held as general fund land. It does not apply to land sold under 2.233 TCPA 1990.

Non-Applicable Sections:	HR and Procurement
Background Documents: (Access via Contact Officer)	N/A