

TO:- Asset Scrutiny Panel

Councillor Michael Lawrence , Councillor Philip Davis , Councillor Chris Benton , Councillor Bob Cope , Councillor Ve Jackson , Councillor Bob Spencer , Councillor Wendy Sutton

Notice is hereby given that a meeting of the Asset Scrutiny Panel will be held as detailed below for the purpose of transacting the business set out below.

Date: Thursday, 19 January 2023

Time: 09:30

Venue: Council Chamber Community Hub, Wolverhampton Road, Codsall, South Staffordshire, WV8 1PX



D. Heywood
Chief Executive

A G E N D A

Part I – Public Session

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| 1 | Minutes
To approve the minutes of Asset Scrutiny Panel meeting of 8th September 2022. | 3 - 4 |
| 2 | Apologies

To receive any apologies for non-attendance. | |
| 3 | Declarations of Interest

To receive any declarations of interest. | |
| 4 | Proposed Leases of Community Land and Buildings – Delegated Authority
Report of the Leader of the Council | 5 - 8 |
| 5 | Increased Term For Long Leases – Delegated Authority
Report of the Leader of the Council | 9 - 12 |
| 6 | Exclusion of Press and Public

To resolve that the Press and Public be excluded from the meeting during consideration of the following items on the grounds that they are likely to involve the disclosure of | |

exempt information as defined in paragraph 3 of Part 1 of Schedule 12(A) to the Local Government Act 1972.

Part II – Private Session

7 Proposed Lease Of Land - Forget-Me-Not Club

This item is exempt in accordance with Schedule 12A Local Government Act 1972

- Information relating to the financial or business affairs of any particular person (including the authority holding that information);

RECORDING

Please note that this meeting will be recorded.

PUBLIC ACCESS TO AGENDA AND REPORTS

Spare paper copies of committee agenda and reports are no longer available. Therefore should any member of the public wish to view the agenda or report(s) for this meeting, please go to www.sstaffs.gov.uk/council-democracy.

Minutes of the meeting of the **Asset Scrutiny Panel** South Staffordshire Council held in the Council Chamber Community Hub, Wolverhampton Road, Codsall, South Staffordshire, WV8 1PX on Thursday, 08 September 2022 at 09:00

Present:-

Councillor Bob Cope, Councillor Philip Davis, Councillor Ve Jackson, Councillor Michael Lawrence, Councillor Robert Spencer

15 **MINUTES**

RESOLVED: That the meeting held on 25 March 2022 were approved and signed by the Chairman.

16 **APOLOGIES**

No apologies were received.

17 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

18 **DEVELOPMENT UPDATE**

RESOLVED: Members noted the development update.

19 **ASSET MANAGEMENT PLAN UPDATE**

RESOLVED: Members noted the Asset Management Plan update.

20 **MAXIMISING THE USE OF OUR ASSETS**

RESOLVED: Members noted the Maximising the Use of Our Assets update.

21 **EXCLUSION OF PRESS AND PUBLIC**

RESOLVED: That the Press and Public be excluded from the meeting during consideration of the following items on the grounds that they are likely to involve the disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12(A) to the Local Government Act 1972.

22 **ASSET INVESTMENT STRATEGY – HINKSFORD MOBILE HOME PARK**

This item is exempt in accordance with Schedule 12A Local Government Act 1972

- Information relating to the financial or business affairs of any particular person (including the authority holding that information);

23 **PROPOSED LEASE OF LAND - SWINDON PARISH COUNCIL**

This item is exempt in accordance with Schedule 12A Local Government Act 1972

- Information relating to the financial or business affairs of any particular person (including the authority holding that information);

20 September 2022

The Meeting ended at: 10:15

CHAIRMAN

SOUTH STAFFORDSHIRE COUNCIL

ASSET SCRUTINY PANEL – 19TH JANUARY 2023

PROPOSED LEASES OF COMMUNITY LAND AND BUILDINGS – DELEGATED AUTHORITY

LEAD CABINET MEMBER – COUNCILLOR ROGER LEES, LEADER OF THE COUNCIL

PART A – SUMMARY REPORT

1. SUMMARY OF PROPOSALS

- 1.1. The Council own land and buildings throughout the District which currently are used for community purposes and are leased to Parish Council's and local community groups. The land is used for recreation purposes usually by local community sports clubs or community associations for the benefit of local residents on a "not for profit basis". The land is leased out at peppercorn or nominal rents for long terms up to 99 years with no break clauses. The report sets out the further details of the land and buildings and details of the leases.
- 1.2 A number of these leases are coming to the end of their terms and this report details recommendations on approvals on how to proceed with lease renewals or any new leases.

2. RECOMMENDATIONS

- 2.1 That Members delegate authority for the granting of renewals of the current leases and the granting of new leases for community purposes, for terms in excess of 5 years at peppercorn or nominal rents only, which is to be delegated under Part 3 (0) (2.6) of the Constitution to the Corporate Director Finance and Resources.
- 2.2 Members agree that any renewals or new leases at a peppercorn or nominal rent will contain additional clauses to protect the Council's interests.
- 2.3 If Members agree to the granting of a new leases that Members delegate authority to the Director of Legal and Governance to execute all documents necessary in this connection.

3. SUMMARY IMPACT ASSESSMENT

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
	Yes	• Vibrant Communities

	Has an Equality Impact Assessment (EqIA) been completed?	
	No	Not required
SCRUTINY POWERS APPLICABLE	Yes	Asset Scrutiny Panel
KEY DECISION	No	
TARGET COMPLETION/ DELIVERY DATE	31 January 2023	
FINANCIAL IMPACT	Yes	The main body of the report in section 4. outlines the financial impact of the proposals to the Council.
LEGAL ISSUES	Yes	s123 of the Local Government Act 1972 & S1 of the Localism Act 2011. In terms of decision making, this will be delegated to the Corporate Director Finance and Resources. Under s123 of the Local Government Act 1972 the Council has a statutory duty if we dispose of land to be at the best consideration – Legal advice will be provided to ensure that the requirements of s.123 are met.
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	The report sets out the alternative options in section 5.
IMPACT ON SPECIFIC WARDS	Yes	All wards within the District.

PART B – ADDITIONAL INFORMATION

4. INFORMATION

- 4.1 The District Council granted and/or are successors in title to long leases to Parish Council's and community associations of leases with long terms in excess of 5 years at peppercorn or nominal rents of £1 per annum or less. Such leases are for the benefit of local communities and are often parish playing fields with/or for community buildings.
- 4.2 In the majority of these leases the tenant has granted underleases to local sports clubs such as football, cricket, bowls, tennis etc and/or for community uses such as allotments. The granting of underleases requires the consent of the District Council under the terms of the lease and therefore we have legal control over the use of the land going forward.

- 4.3 The leases make the tenant responsible for all the costs related to maintaining the land and/or buildings erected on the land and therefore there are no costs related to the leases for the Council.
- 4.4 The under leases will be restricted to a “not for profit basis” and any rents charged will be restricted to cover reasonable running costs only related to the use and maintenance of the land and/or buildings.
- 4.5 The existing leases are old and all in the case of new leases they will reflect updated terms consistent with a modern lease of this type.
- 4.6 As the term is for a long period the new leases will contain terms to protect the Council’s long-term interests. Following advice from the Director of Legal and Governance, the Council’s position will be protected by the alienation provisions within any new lease which will also tied into the permitted use which will be specific and restrictive. If the Parish at any future date try to charge commercial rents for the land then these provisions will allow the District to share any profit accordingly as our consent will be required.
- 4.7 All the existing leases are under the provisions of the Landlord and Tenant Act 1954 and more specifically Sections 24-28 which provide security of tenure for the tenants. The tenant has a legal right to renew their existing leases on the same terms and conditions and if required can apply to the courts who will grant a new lease unless the Council are able to prove one of the statutory grounds for possession. It is extremely unlikely that the Council will be able satisfy the conditions of one of the statutory grounds. The Council are therefore legally obliged to grant a new lease to the tenants in excess of 5 years due to the terms of the original leases.
- 4.8 Open Space Disposal Notices will be required for any new leases on the basis that the existing leases will be renewed and this will be a fresh disposal under Section 123 of the LGA 1972. This will provide an opportunity for any persons to provide a written objections which will be considered prior to any new leases being granted.
- 4.9 Any existing under leases will end on or before the last day of the head lease. Therefore any new under leases granted to the existing or new tenants will require the Councils formal written consent and therefore the District Council will retain control over all prospective new tenants. The Parish Councils or the Community Associations will be responsible for any costs related to the preparation of any underleases.
- 4.10 Under Section 123 of the Local Government Act 1972/ Best Value, this provides a duty for the Council to comply with the best value considerations that any disposal should be at “best consideration”. The Parish Council will be under the same obligations as this Council in terms of their disposals (underleases) in that they will need to comply with the provisions of s123 Local Government Act 1972. This means that both SSDC and the Parish are obliged to seek best value for any disposal. Any disposal at an undervalue needs consent of the Secretary of State. Land held under s123 has the benefit of the Secretary of State’s general consent issued in 2003 which

removes the need to obtain specific consent to transactions where the undervalue is two million pounds or less and the disposal will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.

- 4.11 Currently Part 3 (0) (2.6) of the Constitution approved by the Council authorises the *acquisition, reuse, appropriation and disposal of the Council's land and buildings, in consultation with the Corporate Leadership Team, together with the granting or taking assignment or surrender of leases (not exceeding 5 years), tenancies, licences, easements, wayleaves and variations of rent of the Council's land and buildings*".

5. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

- 5.1 If Members opt to grant new leases for community land/buildings to the Parish Council or Community associations it will be consistent with the Council's Plan of working with to provide vibrant communities.
- 5.2 Any existing under tenants are local community-based groups and will be protected if the proposals are accepted. They will all receive new leases reflecting their specific requirements.
- 5.2 The existing tenants will be responsible for all the District Council's reasonable costs in the preparation of the legal documentation.

6. PREVIOUS MINUTES

None

7. BACKGROUND PAPERS

None

8. Appendices

None

Report prepared by: Andrew France Senior Estates Surveyor for Grant Mitchell – Assistant Director Enterprise & Growth

SOUTH STAFFORDSHIRE COUNCIL**ASSET SCRUTINY PANEL – 19TH JANUARY 2023****INCREASED TERM FOR LONG LEASES – DELEGATED AUTHORITY****LEAD CABINET MEMBER – COUNCILLOR ROGER LEES, LEADER OF THE COUNCIL****PART A – SUMMARY REPORT****1. SUMMARY OF PROPOSALS**

The Council currently own buildings throughout the District which are leased on a commercial basis to businesses and other public organisations at market rents. The majority of these leases have been granted by the Council many of which are long standing but a significant number have either being inherited through local government reorganisation or by acquisition under the Council's Asset Strategy policy. A number of the existing leases are coming towards the end of their terms and this report details recommendations on approvals on how to proceed with lease renewals or any new leases.

2. RECOMMENDATIONS

- 2.1 That Members agree for the granting of renewals of the current leases and the granting of new leases for terms in excess of 5 years to be delegated under Part 3 (0) (2.6) of the Constitution to the Corporate Director Finance and Resources and the term be extended to 10 years.
- 2.2 If Members agree to the granting of a renewals or new leases that Members delegate authority to the Director of Legal and Governance to execute all documents necessary in this connection.

3. SUMMARY IMPACT ASSESSMENT

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
	Yes	<ul style="list-style-type: none">Prosperous and Vibrant Communities and driving economic prosperity.
	Has an Equality Impact Assessment (EqIA) been completed?	
	No	Not required

SCRUTINY POWERS APPLICABLE	Yes	Asset Scrutiny Panel
KEY DECISION	No	
TARGET COMPLETION/ DELIVERY DATE	31 st January 2023	
FINANCIAL IMPACT	Yes	The main body of the report in section 4. outlines the financial impact of the proposals to the Council.
LEGAL ISSUES	Yes	s123 of the Local Government Act 1972 & S1 of the Localism Act 2011. In terms of decision making, this will be delegated to the Corporate Director Finance and Resources. Under s123 of the Local Government Act 1972 the Council has a statutory duty if we dispose of land to be at the best consideration – Legal advice will be provided to ensure that the requirements of s.123 are met.
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	The report sets out the alternative options in section 5.
IMPACT ON SPECIFIC WARDS	Yes	All wards within the District.

PART B – ADDITIONAL INFORMATION

4. INFORMATION

- 4.1 The District Council granted and/or are successors in title to commercial leases with terms in excess of 5 years. These leases fall under the provisions of the Landlord and Tenant Act 1954 and more specifically Sections 24-28 which provide security of tenure for the tenants.
- 4.2 The tenants have a legal right to renew their existing leases on the same terms and conditions (except for the rent) and if required can apply to the courts who will grant a new lease unless the Council are able to prove one of the statutory grounds for possession. It is extremely unlikely that the Council will be able to satisfy the conditions of any of the statutory grounds. The Council are therefore legally obliged to grant a new lease to the tenants in excess of 5 years due to the terms of the original leases. This is currently in breach of Part 3 (0) (2.6) of the Constitution approved by the Council which restricts the terms to 5 years.

Currently Part 3 (0) (2.6) of the Constitution approved by the Council authorises the Corporate Director Finance and Resources in consultation with CLT,

“To authorise the acquisition, reuse, appropriation and disposal of the Council's land and buildings, in consultation with the Corporate Leadership Team, together with the granting or taking assignment or surrender of leases (not exceeding 5 years), tenancies, licences, easements, wayleaves and variations of rent of the Council's land and buildings”

- 4.3 The granting of leases for terms up to 10 years is a fairly common practice within the commercial property market and the majority of tenants looking to occupy our larger units will be looking for terms of this length to provide them with security and to justify and protect investment that they will making. If the Council are restricting the length of the terms offered this will mean that prospective tenants will look elsewhere and if we are restricting the market for our property, less demand means lower rents. The consequence is likely to be increased voids and lower rents.
- 4.4 Longer terms for existing and new leases benefit the Council as they provide security of income going forward and allow more accurate financial forward planning.
- 4.5 The valuation of Council commercial assets is based on the capitalisation of rental income and therefore longer leases will increase the value of the Council's property assets.
- 4.6 The majority of these leases do not have large annual rents and are part of normal day to day good property management process. Where the rents are more significant officers will continue to seek Member approval.
- 4.7 The Council's asset investment programme runs contrary with the restrictions on the term of the lease and all three recent acquisitions have leases with terms in excess of 5 years and the proposed leases for the Wombourne redevelopment are also for longer periods.

5. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

- 5.1 If Members opt to grant an increase of the term for lease renewals and new leases it will be consistent with the Council's Plan of working with local communities to provide vibrant communities and supporting local businesses.
- 5.2 Our existing tenants will be able to renew leases for the same term without the need for Member approval however officers will still provide reports where the rent is significant.
- 5.3 This approach will further improve the management and efficiency of the Council's property portfolio whilst providing assurance that senior officers will maintain strong oversight of the granting of our commercial leases.

6. PREVIOUS MINUTES

None

7. BACKGROUND PAPERS

None

8. Appendices

None

Report prepared by: Andrew France Senior Estates Surveyor for Grant Mitchell – Assistant
Director Enterprise & Growth