

Subject:	Gingerbread Nursery – Landlord’s Review		
Date of Meeting:	8th October 2020		
Report of:	Executive Director Economy, Environment & Culture		
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Ward(s) affected:	Rottingdean Coastal		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The Council received a legal pre-action protocol letter before claim on the 10th July 2020 from the solicitor for the tenant of the Gingerbread Nursery in Saltdean Oval, in relation to the officer delegated decision to refuse the tenant, Childcare 360 Limited a new 25 year lease. Legal advice has been sought and the Council has decided to set aside the officer’s delegated decision as the decision will now be taken at this Policy & Resources Committee. This report sets out the rationale behind the officer’s recommendation to refuse the new 25 year lease requested by the tenant and contains representations from the tenant.
- 1.2 The Committee is invited to take the decision as to whether the lease should be granted – it is not reviewing the previous decision but taking a fresh look at whether the lease should be granted. The Committee should consider all relevant factors and take the decision.
- 1.3 The Officer recommendation is set out at 2.1. To facilitate decision making at Committee an alternative recommendation is set out at 2.2. The Committee is invited to support one of the two recommendations.
- 1.4 This report is complemented by a Part Two report that contains the tenant’s representations in Appendix 1.

2. RECOMMENDATIONS:

The Committee is invited to support one of the two following recommendations:

EITHER

- 2.1 That Policy & Resources Committee refuses to grant a 25 year lease to the tenant of the Gingerbread nursery.

OR

- 2.2 That the Policy & Resources Committee agrees to grant a 25 year lease to the tenant of the Gingerbread nursery.

3. CONTEXT/ BACKGROUND INFORMATION

3.1 Background

There are 2 council owned buildings within Saltdean Oval, both let to Nursery providers. Saltdean Oval Barn (a listed building) is let to Boomerang Kids on a 99 year lease and the adjacent Terrapin Building is let to Childcare 360 Limited on a lease that was granted in September 2017 for 15 years with tenant break options in 2022 and 2027. (See the plan at Appendix 1). This building is in a dilapidated state.

3.2 Terrapin Building – planning permission and lease proposal

Childcare 360 Ltd obtained planning permission in June 2019 to demolish the existing premises and replace with a new nursery building and play area. Terms for a new lease to facilitate the development were initially negotiated with our agents Avison Young in October 2019 for a 25 year term providing a 2 year rent free period and subsequent rent adjustment for 23 years (subject to RPI Increases) to reflect the level of the tenant's investment (£362,000). The new building would belong to the council and at the end of the 25 year lease could be re-let at a market level. This negotiation took place prior to the Ward Councillor briefing described below and the Council's position subsequently changed.

3.3 Ward Councillor Briefing

The Landlord decision to grant a new lease can be made under officer delegations. However, as it was known that the planning application was not supported by ward councillors and attracted nearly 200 comments from residents, officers consulted ward councillors who confirmed they were not supportive. Taking into account the ward Councillor feedback officers decided not to grant the lease and this officer decision was fed back to the tenant in early January 2020.

3.4 Review of Officer Decision as Landlord

In response the tenant submitted a letter challenging the officer decision addressed to the Leader of the Council at that time Councillor Platts, dated 24 January 2020, who asked for the decision to be reviewed. The review was a property review re-examining the asset and estate management aspects of the property case from the council's corporate Landlord's perspective. The council's decision-making process as property Landlord is independent of the Local Authority planning process and different factors will be relevant to its decision making.

3.5 A decision taken under officer delegations will take into account and be influenced by the outcome of any consultation with Ward Councillors but remains an officer decision unless the matter is presented to Committee for Members to consider. In reviewing the Landlord decision officers met with Ward Councillors to discuss in further detail their concerns, which were then investigated. The Landlord review considered in depth the officer recommendations and the Ward Councillor concerns.

3.6 Corporate Landlord's Review Report

A report was prepared recording the Landlord's review (set out in Appendix 2). In summary the issues raised and investigated were:

- **The need for nursery places within Saltdean Ward**

Whilst data was provided reporting an above average number of nursery age children per nursery space available the data does not measure demand for places. In addition, the data does not include information on East Saltdean and only includes BHCC ward data for West Saltdean and is not therefore representative of the entire Saltdean area.

- **The appropriateness of the building design and construction**

All concerns raised have been addressed or will be.

- **Impact on amenity – loss of public open space and additional traffic**

The footprint of the proposed development is larger than the existing building resulting in a loss of 400sqm of designated public open space which is contrary to City Plan Part 1 policy. The proposals do not meet the exception criteria where loss of open space would be permitted. In addition, concern was raised that by increasing the number of nursery places from 25 to 42 there may be a corresponding increase in traffic at peak times.

CityParks have confirmed that they would not support development that does not add benefit to the park for park users. Each case is considered on its own merits, and the building and the provision of a nursery within a park setting does not in itself add benefit to the park or park users.

- **Impact on adjacent nursery (Boomerang)**

The council does not have a duty of care to shelter Boomerang Kids from the potential competition of a new nursery within the park. It is recognised that the potential increase in the adjacent nursery numbers/places from the existing 25 to the consented 42 could impact on Boomerang Kids nursery business.

- **Asset Management**

Saltdean is the only park in the city that has two nurseries which are also adjacent. All other parks in the city with a nursery provision only have one nursery.

- **Governance and Legal**

The council in its role as land owner is not legally bound by the decision of the planning committee. The decision to grant a lease was delegated to officers, who had consulted with Ward Councillors. The Ward Councillors were strongly opposed to the granting of the lease for the reasons set out above and in detail in the Landlord's Review Report at Appendix 2. The Ward Councillors' views represent the views of their constituents and therefore park users.

3.7 **Conclusion**

On balance, having considered the evidence and the main significant concerns relating to nursery provision, impact on amenity, governance and legal, the recommendation remains against the granting of a new lease. In coming to this conclusion, the Landlord decision has taken into consideration the main significant concerns and the local community views as represented by the ward councillors.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 Factors for the Committee to consider

The Committee should consider all the information provided in the appendices to this report and the part two report before reaching a decision.

4.2 The tenant continues his business with the current lease

The building is in a very dilapidated state, which because of its design and construction (it is a temporary portacabin building) is beyond repair and unable to be occupied. The tenant has an existing lease that expires in 2032 with tenant break clauses in September 2022 and September 2027.

The tenant has asked for the council's consent as Landlord to replace the dilapidated portacabin with a new 'like for like' temporary building under the existing lease. The Property Estates team have confirmed that this can be granted subject to the tenant obtaining planning permission for the new replacement building.

If planning permission for a new temporary building is not forthcoming, or the tenant decides against replacing the building, the tenant will likely break the lease at the earliest opportunity (September 2022) and return the building in its current dilapidated state back to the council. This will create a financial liability for the council to demolish and remove the existing building and reinstate the land. This will also result in a loss of income to the council.

4.3 The tenant is granted a new 25 year lease

Terms had previously been negotiated and agreed with the tenant by the council's agents Avison Young to grant a new 25 year lease with consent to construct the new building and offering a 2 year rent free and subsequent rent adjustment to reflect the level of the tenant's investment, leading to a market rent beyond the initial 25 year term, providing the council with ownership of the new building and additional childcare places in Saltdean.

The tenant's representations to support his request to be granted a new 25 year lease are attached as Appendix 1 to Part 2 of this report.

5. COMMUNITY ENGAGEMENT & CONSULTATION

5.1 It should be noted that a community engagement exercise was carried out under the tenant's planning process.

5.2 Ward Councillors have been consulted who represent the views of the community as their constituents and park users.

6. CONCLUSION

6.1 Having reviewed the council's corporate Landlord decision, investigated and responded to the issues raised by Ward Councillors and the tenant, the most significant areas for consideration are nursery provision, impact on amenity, governance and legal as outlined in the Landlord's Review Report at Appendix 2.

- 6.2 Having considered all the evidence summarised in the corporate Landlord Review Report and Report Appendix (Appendix 2 of this report) the recommendation of the property review remains against the granting of a new lease. In coming to this conclusion, the corporate Landlord decision has taken into consideration the significant concerns and the local community views as represented by the ward councillors.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The existing lease generates £7,800 pa, however the tenant has a break clause in 2022 which is very likely to be exercised given the dilapidated state of the building, unless a new lease is granted. The council could therefore incur costs to remove the building and reinstate the land. If this committee approves the granting of a new 25 lease then the council would continue to receive rental income albeit on revised terms and own an enhanced asset.
- 7.2 The financial impact of the decision will be reflected in future years budget estimates.

Finance Officer Consulted: James Hengeveld

Date: 23/09/20

Legal Implications:

- 7.3 Where under the Scheme of Delegations an Officer is authorised to discharge a particular function, they shall not be precluded from placing the matter before the relevant Committee for consideration if they consider it appropriate. Given the controversy surrounding the previous decision it was appropriate for Officers to refer the decision to committee.
- 7.4 It is doubtful that a decision taken by the Council in its capacity as corporate landlord can be reviewed by way of judicial review because it is a matter to which private law considerations apply, not public law ones. Nevertheless, the Committee should carefully consider all the information provided in the appendices and any other factors it considers relevant to ensure that a legally safe decision is made and that no judicial review would be successful.
- 7.5 The Council must ensure when it leases land that it is securing the best consideration reasonably obtainable (S123 Local Government Act 1972). The Council's Valuer has confirmed that the terms previously agreed met this test.

Lawyer Consulted:

Alice Rowland

Date: 3/9/20

Equalities Implications:

- 7.6 The opportunity is being given for the committee to take a fresh look at whether the lease should or should not be granted taking into account all relevant factors to enable a fair and proportionate informed decision.

Sustainability Implications:

- 7.7 The new lease and proposed new building would impact on the loss of public open space and do not meet the exception criteria where loss of space would be permitted. The proposed new building is adjacent to the Boomerang nursery and may need to be reviewed to make sure COVID guidelines are met.

Brexit Implications:

- 7.8 There are none.

SUPPORTING DOCUMENTATION

Appendices:

1. Plan
2. Corporate Landlord's Review Report

Background Documents

None