

<b>DECISION-MAKER:</b>	SENIOR MANAGER PROPERTY PROCUREMENT & CONTRACT MANAGER
<b>SUBJECT:</b>	SOUTHBROOK RISE OFFICES - TERMINAL SCHEDULE OF DILAPIDATIONS
<b>DATE OF DECISION:</b>	6 FEBRUARY 2013
<b>REPORT OF:</b>	PROPERTY ASSET MANAGER

#### **STATEMENT OF CONFIDENTIALITY**

The confidential appendix to this report contains information deemed to be exempt from general publication based on Category 3 of Paragraph 10.4 of the Council's Access to Information Procedure Rules. The appendix includes information on the proposed dilapidations settlement which, if disclosed prior to entering into any contracts, could put the Council at a commercial disadvantage. In applying the public interest test it is not considered appropriate to publish this information as it could influence the outcome of the dilapidations claim for a property which may be to the Council's financial detriment.

#### **BRIEF SUMMARY**

The report seeks approval to the proposed settlement of the Council's Landlord's terminal dilapidations claim to the maximum figure outlined in the confidential appendix. The liability for dilapidations (damages) follows the the surrender of the Council's lease of Southbrook Rise which comprise 38,524 sq ft of general purpose office accommodation occupied by the council since 1996 and vacated on 30 September 2012.

#### **RECOMMENDATIONS:**

- (i) To approve payment of the terminal dilapidations liability to the landlord following surrender of the Southbrook Rise lease, as set out in the Confidential Appendix.

#### **REASONS FOR REPORT RECOMMENDATIONS**

1. It is a contractual requirement under the lease terms for the council to keep and yield up the premises in good and tenantable repair and condition, subject to specific exceptions outlined in paragraph 6 below. The council vacated the premises without carrying out reinstatement, repairs, and redecorations resulting in a dilapidations liability. All this is in line with normal commercial practice between landlord and tenant where it is not unusual for tenants to vacate the premises at the end of their lease in need of outstanding repairs and reinstatements.

#### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

2. The council undertake works directly - although this was considered in some detail it was felt that the consequent and costly delays to the ASAP project would rule this out. Now that the council no longer has a legal interest in the property this is not feasible.
3. Seek payment into an escrow account held to the joint order of landlord and the council so that the council can be 100% assured that the monies can only be used 100% for the intended purpose, and not be held back for

something else, and not for betterment of the property. This is not necessary as the landlord's clear intention is to undertake the repairs, redecorations and reinstatement works as soon as they have access to the dilapidations damages. There is no known precedent for dilapidations payments into an escrow account and would be likely to significantly delay a settlement.

4. If the Council does not settle this claim an application will be made to Court by the Landlord and costs would increase including landlord's fees and costs plus increased interest payments.

**DETAIL (Including consultation carried out)**

5. Under the terms of the Southbrook Rise lease the council has responsibility to repair and keep the whole of the demised premises including any service apparatus and any Landlord's fixtures and fittings in good and tenable repair and condition having regard to the age of the demised premises.
6. There are specific exceptions within the lease which limits the council's dilapidations liability. Allowance to exclude these has been agreed with the landlord's surveyor.
  - a. the raised flooring at the demised premises creaks under foot and the Tenant shall not be obliged to rectify this
  - b. the Tenant shall not be obliged to keep the Service Apparatus in any better state or condition than as evidenced in the Condition Report dated August 1996.
  - c. the Tenant shall not be obliged to keep the curtain walling at the demised premises in any better condition than that set out in an appendix to the lease.
7. The Council is also liable to pay all proper costs charges and expenses incidental to the preparation and service of a schedule of dilapidations within three months before or two months after termination of the Term (but relating only to dilapidations which accrued prior to the termination of the lease on 30 September 2012).
8. The provisionally agreed dilapidation amount is solely the cost of the works which are required to deal with the non-compliance of repairs, decorations and removal of partitions and tenants fixtures. The landlord has accepted that there are no incidental items of claim such as loss of potential rent or empty rates, unrecoverable service charges and insurance premiums for the duration of the works contract. That is a recognition that in the current market the building would likely take a year or more to let whether in or out of repair well beyond the length of a works contract period.
9. The lease provides for the council to yield up the premises good and tenable repair and condition and to be redecorated at the fourth and last years of the lease. It also provides for removal of temporary partitioning and tenant's fixtures and making good of any damage caused by removal. Rather than carry out repairs and redecorations at regular intervals during the lease with the inevitable disruption that causes, it is more cost effective for dilapidations to be paid to the landlord after lease expiry.
10. The landlord separately tendered for the repairs and reinstatement works alone without any element for expected improvements to the property. In all four companies made tender bids including from one also on the council's list

of approved contractors. The lowest tender price has been accepted by the landlord and this formed the basis of the negotiations with the landlord's surveyor.

11. Having regard to the above, negotiations have taken place with the landlord's surveyor and provisional agreement has been reached costing the works at the figure in the confidential appendix.
12. Under the lease terms interest at 3% over base rate will be due which is standard commercial practice, so it is important to resolve this as soon as possible after the best settlement figure has been reached, to avoid additional interest payments.
13. The landlords stated intention is to carry out works to enable re-letting as offices. While in normal circumstances the landlord would seek to mitigate losses and commence works immediately, in the current poor office letting market the landlord is reliant on the tenant's payment of dilapidations monies before commencing works.

## **RESOURCE IMPLICATIONS**

### **Capital/Revenue**

14. **Capital:** None
15. **Revenue:** The vacation of Southbrook Rise forms part of the existing accommodation strategy. All costs and savings associated with the implementation of this strategy have been taken into account in the strategic reserve, including dilapidations costs. As a result of the surrender of the lease the council will no longer be paying a future rental liability of £645,800 and rates liability of £210,800. The ongoing revenue savings from vacating the building have already been taken into account in future budgets as part of the existing accommodation strategy.

### **Property/Other**

16. The council's surveyors are satisfied that the damages for the breach of the covenant to keep the premises are in line with the Landlord and Tenant Act provisions on dilapidations damages. It is the intention of the landlord to use the dilapidations monies as part of a larger refurbishment of the premises with a view to re-letting in parts.

## **LEGAL IMPLICATIONS**

### **Statutory power to undertake proposals in the report:**

17. Section 1 Localism Act 2011 and Section 123 Local Government Act 1972 cite the general power of competence, in this case to incur cost – in the context of the council's disposal of its' leasehold interest.

### **Other Legal Implications:**

18. The Senior Manager Property, Procurement & Contract Management has delegated powers to negotiate and approve the dilapidations settlement as outlined in paragraph 2.8.42 of the Officer Scheme of Delegation after consultation with the relevant Cabinet Member. The Cabinet Member for Resources has accordingly been consulted and agreed to the settlement.

19. As the council has vacated the premises the payment of dilapidations is a legal obligation under the terms of the lease which cannot be avoided.

**POLICY FRAMEWORK IMPLICATIONS**

20. The proposals are not contrary to the Council's policy framework

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**KEY DECISION?** Yes

<b>WARDS/COMMUNITIES AFFECTED:</b>	ALL
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**SUPPORTING DOCUMENTATION**

**Appendices**

1.	Heads of Claim and Provisionally Agreed Settlement
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**Documents In Members' Rooms**

1.	None
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**Equality Impact Assessment**

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	Yes/No
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**Other Background Documents**

**Equality Impact Assessment and Other Background documents available for inspection at:**

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	None	
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