
NON EXEMPT

HAVANT BOROUGH COUNCIL

CABINET

22 March 2023

Increase in capital expenditure through in-year by use of reserves re. site at Southmoor Lane, Havant

FOR DECISION

Portfolio Holder: Cllr Tim Pike

Key Decision: Yes

Report Number: HBC/126/2023

1. Purpose

- 1.1. The purpose of the report is to seek a decision for a release of corporate reserves to fund a surrender of lease at the above site.

2. Recommendation

TO APPROVE

- a. The use of Corporate Reserves in order to facilitate the surrender of the head leasehold interest in the council owned site at Southmoor Lane, Havant.

3. Executive Summary

- 3.1 HBC own the freehold interest of the site registered under title HP385403.
- 3.2 The current lease granted to Suez Recycling and Recovery Southeast Ltd is for a term of 123 years from 20th Feb 1989 subject to 5 yearly reviews. (An 'old lease' pre-Landlord and Tenant Covenants Act 1995)
- 3.3 The lease suffers from various restrictions including restrictions on user and assumptions regarding the hypothetical term to be valued.
- 3.4 The current passing rent is £65,000 pax. The February 2019 review has been provisionally agreed at £80,000 but not formally documented.
- 3.5 Various discussions took place with Suez regarding HBC purchasing their interest/ accepting a surrender of Suez long leasehold interest.

Provisional agreement was reached on the following terms:

- Capital payment to Suez of £400,000 in lieu of surrender of long leasehold interest on a full and final settlement basis.

Conditional upon:

- Suez yielding up the site with vacant possession by an agreed long stop date of 31st March 2023. Target date for vacant possession is 24th March 2023.
- All back dated rent to be paid by Suez from Feb 2019 until conditionality fully discharged equating to approx. £60,000

3.6 In summary, the agreed terms to acquire Suez interest/ accept a surrender offers HBC greater future opportunities for the site from an operational and asset management perspective.

3.7 The independent valuations fully support the proposed surrender of Suez long leasehold interest on those agreed terms as summarised above.

3.8 There is scope for HBC to re purpose the site for operational use or to generate additional revenue by way of future redevelopment of the site subject to the usual planning constraints and risks

3.9 The recommendations contained within this report are fully supportable from an asset management perspective and represent 'best consideration' in accordance with HBC's statutory and governance requirements.

4. Additional Budgetary Implications

4.1. The report requests a drawdown against the HBC Corporate reserves. Payment will be required on completion of the acquisition of the Long Leasehold interest of the site

4.2. There will be a loss of revenue rental income, (currently budgeted at £65,000 per annum), from the time of transacting ie completion of the surrender until the site is 're-purposed and re let/ developed. In addition, void/ holding costs would be incurred whilst the site is vacant and unoccupied. Assume 6 month letting void. This has been factored into the Council's Medium Term Financial Planning assumptions.

4.3. However, the surrender and 're purpose' of the industrial site could unlock various options on other HBC owned sites and realise additional revenue over the medium to long term.

5. Background and relationship to Corporate Strategy and/or Business Plans

5.1. The recommendations contained within the report are fully consistent with the latest HBC Corporate Strategy 2022 – 2025.

6.0 Options considered

- 6.1 Various asset management options have previously been evaluated for the site in advance of agreement being reached to accept a surrender of Suez long leasehold interest.
- 6.2 Do nothing option is not considered an option and would be subject to litigation risk/ a claim by Suez if the Deed of Surrender is not completed by the long stop date.
- 6.3 Disposal of the long leasehold interest to a third party would also be a probability if HBC withdrew from the contract. This would represent a lost opportunity for HBC to merge the freehold and long leasehold interest realising 'marriage value'.

7. Resource Implications

7.1 Financial Implications

Appendix A sets out 10 year cash flows based upon original and updated information and assumptions.

Section 151 Officer Comments

Date: 10th March 2023

A financial appraisal has been carried out on the proposal attached at appendix A. The appraisal evaluates the value of rent that could be derived from the site if it was just used for open storage, this would require no further investment from the Council.

The appraisal shows that with rent at that level the council will recover its investment in the site and that this is an appropriate use of corporate reserves as it will have a positive impact on the Council's Medium Term Resource Strategy and therefore reserves will not fall below a prudent value. An update on the level of reserves was reported to Full Council on the 23rd February.

Once the long lease has been secured the Council may look at other options for this site that could be more financially advantageous but those are not considered as part of this report.

7.2 Human resource implications

Not applicable.

7.3 Information governance implications

Not applicable.

7.4 Other resource implications

Not applicable.

8 Legal Implications

- 8.1.1 Completion of the surrender would also resolve the legacy issues and historic breaches associated with occupation of the site.

Monitoring Officer comments

Date: 9th March 2023

The financial aspect to this real estate transaction involves utilisation of reserves. Constitutionally this is something Cabinet would decide in terms of in year use of reserves, as per Standing Order 64.

Specifically, Standing Order 64.3.1 provides that Cabinet may increase in-year use of reserves (in addition to the use of reserves planned in the budget calculations) provided that such use of reserves do not exceed £1,000,000 in aggregate in a financial year and provided that the Chief Finance Officer has certified in writing that such use of reserves would not cause the Council's overall reserves to fall below a prudent level.

Any such use of reserves shall be reported to the next meeting of Full Council

9.0 Risks

- 9.1 Invalid assumptions adopted for appraisal purposes and deterioration in conditions of the property market albeit this is considered unlikely over the next 12 months.
- 9.2 Failure to mitigate letting voids within target timescales.
- 9.3 Any macro-economic factors outside of HBC's control.
- 9.4 Risk of Suez being unable to comply with conditionality to yield up the site with vacant possession, (which is considered low).
- 9.9 Privity of Contract liability ie recourse against original tenant (pre Landlord and Tenant Act 1995) will end once surrender completed on a full and final settlement basis.

10. Consultation

- 10.1. Detailed consultation with Portfolio Holder, Leader, Chief Exec and Senior Finance Officer took place w/c 25th April 2022
- 10.2. Further briefing with PH took place on 11th May 2022. Chair of Scrutiny to be briefed on 11th May 2022 and approved.
- 10.3. Final briefing/ consultation to take place with Leader, Deputy Leader, Portfolio Holder and EMT on 8th March 2023.
- 10.4. Comms Team to be briefed in advance of completion of surrender with Suez and final date confirmed.

11. Communication

- 11.1. See comments above.

12. Appendices

- 12.1. Appendix 1: 10 year cash flow assuming surrender and re let of site for open storage purposes.

13. Background papers

- 13.1. None.

Agreed and signed off by:

Portfolio Holder: Cllr Tim Pike (13/03/23)

Head of Service: Chris Riggott (14/03/23)

S151 Officer: Wayne Layton (14/03/23)

Monitoring Officer: Mark Watkins (14/03/23)

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