



Briefing Note

Committee

CORPORATE SCRUTINY COMMITTEE

Date

10 OCTOBER 2023

Title

CALL-IN OF BROWNS GOLF COURSE LEASE DECISION

BACKGROUND

1. The purpose of the Delegated Decision was to consider the award of a 5-year lease for Browns golf, putting and clubhouse.
2. The decision was signed off by Cllr Julie-Jones Evans - Cabinet Member for Economy, Regeneration, Culture and Leisure – on Friday 1 September 2023.
3. On Friday 8th September 2023 a notice of call-in was received which was supported by Cllr Robertson (the Lead Member), Cllr Beston, Cllr Brading, Cllr Drew, Cllr Outlaw, Cllr Quigley, Cllr Quirk, and Cllr. Ward.
4. The outcome sought from the call-in is assurance that the Council has the benefit of a break clause to invoke on its own volition should the Council wish to gain possession of the land in order to facilitate future regeneration projects.

RESPONSE

5. Whilst there is a tenant in place and has been trading since 29 July 2023 there is not a current lease; the tenant has signed and returned the Heads of Terms which are used to inform the drafting of the lease by the Council's legal team.
6. The break clause from the draft lease is below: -

Break Clause

39. Definitions:

Break Date: a date which is at least 6 months after service of the Break Notice.

Break Notice: written notice to terminate this lease specifying the Break Date.

39.2 Either the Landlord or the Tenant may terminate this lease by serving a Break Notice at any time on the other party.

39.3 A Break Notice served by the Tenant shall have no effect if, at the Break Date:

39.3.1 the Tenant has not paid any part of the Rent, or VAT in respect of it, which was due to have been paid; or

39.3.2 vacant possession of the whole of the Property is not given.

- 39.3.3 *there is a subsisting material breach of any of the tenant covenants of this lease relating to the state of repair and condition of the Property.*
- 39.4. *Subject to Clause 39.3, following service of a Break Notice this lease shall terminate on the Break Date.*
- 39.5. *Termination of this lease on the Break Date shall not affect any other right or remedy that either party may have in relation to any earlier breach of this lease.*

7. It should be noted that the offers for the lease were on the basis of a 5-year lease and the tenant has already incurred a considerable amount of expenditure based on recovering this over 5 years.

FURTHER QUESTIONS

8. Further clarification was sought on if the lease was terminated early by the Council that there would be no liability on the Council relating to lost income or investment in infrastructure expenditure incurred by the lease holder, on what was being spent by the Council and also the income that the lease would be expected to generate over the five year life of the lease and whether the decision had the potential to seriously undermine the Bay Regeneration Plan.

FURTHER RESPONSE

9. As set out in the delegated record the works to the front of the clubhouse and to the roof of the toilets a capital budget of £65,000 is available; this is made up of a £32,000 underspend from a leisure scheme, £20,000 from the Property Services capital maintenance budget with the remainder coming from the Repairs and Renewals Fund.
10. The successful rental offer from the bidder number two was:
- 2023 - £1,000 per month of operation plus 20% of net profits
 - 2024 to 2027 - £8,000 plus 20% of net profits
11. Legal services have confirmed that although heads of terms were sent out and agreed with the occupier, no contractual relationship exists at this time and therefore any monies that have been spent by the occupier have been at their own risk and it is not a liability of the council.
12. The draft lease contains provisions for a break clause which enables either the landlord or Tenant to terminate the lease with six months' notice; – this allows for future developments to the wider site to be considered and determined as part of the overall Place Plan aspirations for Sandown and the Bay area.
13. In terms of the implications of this decision on the Bay Area Place Plan, the Place Plan will primarily provide the themes and principles which should be carried through the thinking of any regeneration, redevelopment or community development ideas that come forward.
14. The Browns site had been discussed prior to the main PP consultation event (Think Space Event) at a stakeholder event at the Trouville and was fresh in people's minds at that time. It was mentioned at the Think Space Event as an

asset and an opportunity but our consultants made it clear that they were not in a position make a decision on the future of that site, rather to understand the themes and principles that are important to people so any future long-term decision could be guided by a local need/want.

15. Accordingly, the anticipation of the Place Plan should not prevent business as usual activities to safeguard respective assets like the Brown's pavilion building. Should another viable concept come forward the break clause in the draft lease is considered sufficient. It is unlikely that material change could occur ahead of the terms of that clause.
16. There are numerous other projects running concurrently with the development of the place plan, based on various individual business justifications. It is anticipated that when the Place Plan is formally adopted, each of these will look to it to provide some guiding principles, but we wouldn't expect to delay any of these projects or put them/viability/funding at risk in order to await the plan.

CONCLUSION

17. The councillors that submitted the call-in request determined that the call-in should go to a formal meeting for discussion.