

SCARBOROUGH BOROUGH COUNCIL

Town Hall
Scarborough
YO11 2HG

13 June 2016

Dear Councillor

CABINET - TUESDAY, 14TH JUNE, 2016 – ADDITIONAL ITEM

I am now able to enclose, for consideration at next Tuesday, 14th June, 2016 meeting of the Cabinet, the following report that was unavailable when the agenda was printed.

Agenda No	Item
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8	a) <u>Letting of Unit 2, Cholmley Way, Whitby</u> (Pages 1 - 14)
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To consider a report by the Director (NE) (reference 16/140) attached.


Yours sincerely



David Kitson
Regulatory and Governance Manager

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	<p>REPORT TO CABINET</p> <p>TO BE HELD ON</p> <p>14 JUNE 2016</p>
<p>NOT FOR PUBLICATION - This report contains exempt or confidential information in Appendix 2 relating to the financial and business affairs of any particular person (including the authority holding that information)</p>	<p>Key Decision NO</p> <p>Forward Plan Ref No</p>
<p>Council The revenue income received from the Council's non-operational portfolio helps the Council be an efficient and effective Council, which is financially sustainable for the future.</p>	<p>Cabinet Portfolio Holder Cllr M Cockerill, Harbours, Assets, Coast and Flood Protection</p>

REPORT OF DIRECTOR (NE) – 16/140

WARDS AFFECTED: STREONSHALH

SUBJECT: LETTING OF UNIT 2 CHOLMLEY WAY, WHITBY

RECOMMENDATION (S):

Cabinet is requested to approve the property transaction detailed in this report.

REASON FOR RECOMMENDATION (S):

To finalise the transaction in accordance with the Council's Constitution.

HIGHLIGHTED RISKS:

Rejection will require further marketing and may result in a delay in the letting of the unit and/or the Council not obtaining best consideration.

1. INTRODUCTION

1.1 The Council has a portfolio of non-operational properties, which are:

- Properties let to third parties and which produce a revenue income.
- Properties which are surplus and awaiting disposal.

- Properties required for the Council's future needs.
- 1.2 The portfolio is managed by a team of professionally qualified Surveyors in the Estates Management Unit. These Officers, as part of the management process, negotiate sales, rent reviews, leases and licences.
 - 1.3 The subject property, Unit 2 Cholmley Way, Whitby is currently occupied by a long standing tenant and falls into the 'let to a third party and producing a revenue' category. The Tenant has served notice to vacate the premise as of the 20 September 2016 and is currently undergoing a programme of dilapidations works as is required under their lease agreement.
 - 1.4 In tandem with these dilapidation works the Estates Team have been marketing the unit and are seeking offers to rent by way of private treaty. This is considered to be the best way of marketing this unit in order to achieve the optimum rental value.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

- 2.1 The income produced from the portfolio is used to help the Council be an efficient and effective Council, which is financially sustainable for the future.

3. BACKGROUND AND ISSUES

- 3.1 The current tenant has been in occupation of this unit since 1987 but has now decided to relocate their operation to York where they have an existing presence. They have therefore served notice to vacate the premise.
- 3.2 The unit is located within the Whitby Business and Industrial Park which occupies a site of approximately 23 hectares on the southern outskirts of Whitby to the north east of the A171.
- 3.3 Part of the Business Park is within the North York Moors National Park and the planning function is therefore split between Scarborough Borough Council and the National Park Authority. Both local planning authorities resolved to produce a joint 'Area Action Plan' covering the Business Park as a whole. In October 2014 the Planning and Development Committee approved the adoption of the Whitby Business Park Area Action Plan (ref:14/324).
- 3.4 The purpose of the Area Action Plan is to produce a comprehensive strategy that helps ensure that the Business Park can make an increasingly important contribution to the economy of the area, providing jobs and services in the locality. One of the roles of the plan is stimulating investment and creating job opportunities and the successful letting of this unit supports this ethos.
- 3.5 The unit has been marketed on the Council's website and on a national database (Property link) since mid-April 2016, together with an advertising board on the entrance to the estate. Whilst there has been some interest to date there has only been one firm offer put forward. This offer has been made

with the condition that the premise is taken off the market with immediate effect and no further viewings take place.

4. CONSULTATION

4.1 No formal consultation has taken place other than with the interested party.

5. ASSESSMENT

5.1 The current Tenant occupies the premise by way of terms outlined in the private and confidential Appendix 2. The current rent passing is also shown in Appendix 2.

5.2 The new applicant's details and offer are also outlined in the attached Appendix 2. Their proposal is considered to be suitable for the following reasons:

- it is a good financial offer from an established company;
- it is a seamless new letting of the unit;
- it mitigates any void costs in respect of business rates and maintenance liabilities for the Council;
- it provides security of occupation for the ingoing tenant so that he can plan his move and business expansion.

6. IMPLICATIONS

(a) Policy

6.1 There are no policy issues relating to this report

(b) Financial

6.2 The financial implications are detailed within Appendix 2.

(c) Risks

6.3 The key risks have been identified in the attached risk matrix as Appendix 1.

(d) Legal

6.4 The new lease, and agreement to lease if necessary, will need to be properly documented by the Council's Legal department.

(e) Equalities and Diversity

6.5 There are no equalities or diversity issues.

Nicholas Edwards

Nicholas Edwards
Director

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Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	June 2016	Rejection of the negotiated rental offer	Further marketing of the site which may result in a delay in the letting of the unit and therefore a period of lost revenue and rates and maintenance liability. Potentially a lower rental offer may have to be accepted.		B2	A1	Estates Manager	Agree and document the new lease.

Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

Risk Scoring

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

Likelihood:

- A = Very Low
- B = Not Likely
- C = Likely
- D = Very Likely
- E = Almost Certain

Impact

- 1 = Low
- 2 = Minor
- 3 = Medium
- 4 = Major
- 5 = Disaster

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Document is Restricted

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**LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS)
(MEETINGS AND ACCESS TO INFORMATION) (ENGLAND)
REGULATIONS 2012 ('THE REGULATIONS')**

SCARBOROUGH BOROUGH COUNCIL ('THE COUNCIL')

**NOTICE OF A PRIVATE MEETING OF A DECISION MAKING BODY TO WHICH THE MAYOR (IN THE ABSENCE OF THE
CHAIR OF THE OVERVIEW AND SCRUTINY BOARD) HAS AGREED IS URGENT AND CANNOT REASONABLY BE
DEFERRED**

1. At least 28 clear days before a private meeting¹, the decision-making body must make available at its offices a notice of the intention to hold the meeting in private, and must also publish that notice on their website (if they have one)².
2. The notice referred to in paragraph 1 above must also include a statement of the reasons for the meeting to be held in private³.
3. At least 5 clear days before a private meeting, the decision-making body must make available at its offices a further notice of its intention to hold the meeting in private, and must also publish that notice on their website (if they have one)⁴.
4. The notice referred to in paragraph 3 above must include a statement of the reasons for the meeting to be held in private, details of any representations received about why the meeting should be open to the public, and a statement of the decision-making body's response to any such questions⁵.
5. Where the date by which a meeting must be held makes compliance with the above requirements impractical, the meeting may only be held in private where the decision-making body has obtained agreement from the Chairman of the Overview and

¹ A 'private meeting' means a meeting, or part of a meeting, of the decision-making body during which the public are excluded due to the confidential or exempt nature of the business being transacted.

² Regulation 5(2) of the Regulations.

³ Regulation 5(3) of the Regulations.

⁴ Regulation 5(4) of the Regulations.

⁵ Regulation 5(5) of the Regulations.

Scrutiny Board (or in their absence the Chair of the authority (the Mayor)), that the meeting is urgent and cannot reasonably be deferred⁶.

6. **NOTICE IS HEREBY GIVEN** that compliance with the requirements for giving public notice has been impracticable in relation to the items of business detailed in the below table:

Date of decision	Matter	Short description	Decision maker	Cabinet Member & Lead Officer	List of Documents to be submitted to decision maker	Public/Private Statement of reasons if Private
14/6/2016	Letting of Unit 2, Cholmley Way, Whitby	To provide the necessary authority to enable the Council to agree the letting in principle of the unit.	Cabinet	Cllr Cockerill Nick Edwards Bryan Walker	Report of the Director (NE)	Appendix 2 of this report contains information which is exempt information under Paragraph 3 ⁷ of Part 1 of Schedule 12A of the Local Government Act 1972.

⁶ Regulation 5(6) of the Regulations.

⁷ Information relating to the financial or business affairs of any particular person (including the authority holding that information).

7. **NOTICE IS ALSO HEREBY GIVEN** to the public that the Mayor (in the absence of the Chair of the Overview and Scrutiny Board) has agreed that the Cabinet may hold a private meeting to consider the exempt appendix to the report referred to in the above table because the meeting is urgent and cannot reasonably be deferred. The reasons are set out in the table below:

Date of Authority Chair's agreement	Matter in respect of which the decision is to be made	Reasons why the meeting is urgent and cannot reasonably be deferred
13/6/2016	Letting of Unit 2, Cholmley Way, Whitby	<p>The Council only recently received an offer for the tenancy meaning that it was not possible to provide the usual period of notice prior to the next Cabinet meeting.</p> <p>It would not be reasonable to defer this matter for the following reasons:</p> <p>(a) The prospective tenant requires approval in principle to enable them to serve adequate notice at their current premises to allow them to occupy the unit as soon as the current tenant vacates;</p> <p>(b) Deferring the decision would likely result in the Prospective Tenant:</p> <p>(i) withdrawing their offer; or</p> <p>(ii) not being able to serve notice within sufficient time to allow them to occupy the unit upon vacation of the current tenant,</p> <p>which would lead to uncertainty, a loss of income, and the Council potentially having to go back to the market (adding further costs). This in turn impacts upon the Council's ability to obtain best value, and public finances.</p>

13 June 2016

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