

Signed off by	Chief Finance Officer
Author	Daniel Jones, Property Services Manager
Telephone	Tel: 01737276872
Email	Daniel.Jones@reigate-banstead.gov.uk
To	Partner, Shareholder and Trustee Executive Sub-Committee
Date	Thursday, 18 July 2024
Executive Member	Executive Member for Finance, Governance and Organisation

Key Decision Required	Y
Wards Affected	Redhill East; Earlswood and Whitebushes; Meadvale and St Johns; Redhill West and Wray Common

Subject	Asset Transfer, 13 Marketfield Way, Redhill
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Recommendations

That the Partner, Shareholder and Trustee Executive Sub-Committee:

- (i) Notes the acquisition by lease of an asset comprising community facilities at 13, Marketfield Way, Redhill;**
- (ii) Approves the allocation of a £0.379 million capital contribution from the developer of 13 Marketfield Way to fund fitting-out works;**
- (iii) Approves the disposal of the community facilities at 13 Marketfield Way, through the grant of a 25 year underlease at a peppercorn rent to YMCA East Surrey on terms as set out in the report.**

Reasons for Recommendations

13 Marketfield Way is a leasehold community facility that is being transferred to Council ownership under the terms of a Section 106 planning agreement in respect of a private residential development in Redhill town centre.

Under the terms of the agreement the developer, Lodgecrest Developments, is providing a capital contribution of £0.379 million for the Council to undertake works to fit-out the premises to enable letting at a peppercorn rent to the YMCA East Surrey. The YMCA will

sub-let an agreed part of the premises to a local healthcare provider, Alliance for Better Care CIC.

Approval is required:

- To grant a lease, at a peppercorn rent to the YMCA, which constitutes a disposal of an asset at 'less than best consideration;' and
- To use the developer-funded capital contribution to fund finishing and fitting-out works.

This will enable the provision of additional community and healthcare services in Redhill and the surrounding area.

Executive Summary

Under the terms of a Section 106 agreement, the Council has been granted a 99-year lease of a property at 13 Marketfield Way, Redhill, along with a capital contribution of £0.379 million to fit-out the premises.

The Section 106 agreement requires the property to be provided for community use. Terms have been agreed for the grant of an underlease to YMCA East Surrey.

YMCA will be the Council's direct tenant and will sub-let an agreed part of the premises to a local healthcare provider, Alliance for Better Care CIC (ABC), as joint occupier.

The underlease to YMCA will be granted for term of 25 years on an effective full repairing and insuring basis at a peppercorn rent. An option to break will allow either the landlord or the tenant to end the lease on the 10th, 15th, or 20th anniversary of the term. The YMCA will be responsible for all costs of occupation including service charge and business rates.

Approval is required for the grant of the lease as the peppercorn rent constitutes a disposal at 'less than best consideration' under the provisions of the Local Government Act 1972 - General Disposal Consent (England) 2003. However, in accordance with the Act, the Council considers that the disposal is justified as it will help it secure the promotion or improvement of the economic, social, or environmental well-being of its area.

Funding for the finishing and fit-out works has been provided by the developer under the terms of the Section 106 agreement, however, as the expenditure exceeds £250,000, it constitutes a Key Decision and is subject to approval by the Sub-Committee.

Statutory Powers

1. Section 1 of the Localism Act 2011 gives local authorities a general power of competence that enables them to do anything that a private individual is entitled to do, as long as it is not expressly prohibited by other legislation.
2. Local authorities have powers under the Local Government Act 1972 to dispose of land in any manner they wish, including granting a lease, providing that a disposal is for the best consideration reasonably obtainable.
3. The Local Government Act 1972: General Disposal Consent (England) 2003 removes the requirement for authorities to seek specific consent from the Secretary of State for Levelling Up, Housing & Communities for any disposal of land for less than best consideration where the difference between the value of the interest and the consideration accepted (the undervalue) is £2,000,000 or less and where the authority

considers that the disposal will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.

Background

4. 13 Marketfield Way, Redhill is a circa 250m² community facility that is being transferred to the Council's ownership under a Section 106 agreement.
5. The community facility was built as part of a new private apartment complex, Marketfield Court, located opposite the Council's new cinema and leisure development, The Rise.
6. Prior to the COVID-19 pandemic, terms had been agreed in principle for a voluntary sector occupier to take an underlease of the community premises to operate as managed workspace for the voluntary sector. However, due to uncertainty around post-COVID demand for office space, this interest fell away, leaving the Council with no occupier for the property.
7. Following subsequent discussions with a number of potential users for the premises, terms were agreed for a lease to two new occupiers, YMCA East Surrey and a local healthcare provider, Alliance for Better Care CIC, which offer complimentary services to the community.

Key Information

Headlease Granted to the Council

8. The developer, Lodgecrest Developments, has granted the Council a 99-year lease of the community premises at a peppercorn rent.
9. The Council is responsible for all internal repairs to the premises and will pay a service charge in respect of repairs, maintenance and insurance of the larger building and estate.
10. Whilst the Section 106 agreement required the developer to provide a property specifically for community use, or for use by the voluntary sector or charitable organisations, the Permitted Use of the premises specified in the lease allows for a wider range of uses to allow for changing requirements over the term of the headlease.
11. The Council is permitted to underlet the premises and to assign the lease.

Underlease to YMCA East Surrey

12. It is proposed that YMCA East Surrey will be the Council's direct tenant and will take an underlease of the whole premises.
13. YMCA will sub-underlet an agreed part of the premises to a local healthcare provider, Alliance for Better Care CIC, as joint occupier.
14. The lease will be granted at a peppercorn rent for term of 25 years on an effective full repairing and insuring basis.
15. An option to break will allow either the Landlord or the Tenant to end the lease on the 10th, 15th, or 20th anniversary of the term.
16. The YMCA will be responsible for all costs of occupation including service charge and business rates.

Policy Framework

17. Council Policy is that all lettings must be at a market rent and that the Rental Grant Subsidy (RGS) scheme is used to support qualifying tenants.
18. However, in this case it was not possible to secure an agreement on the basis of a market rent. The RGS scheme does not offer a long-term guarantee of subsidy and the YMCA is not prepared to take on the lease where there is a risk that subsidy could be withdrawn and that a rent liability would then arise.
19. In order to secure a suitable occupier for the premises, and the community services that they will provide, it is proposed to grant the lease at a peppercorn rent and deal with the transaction as a disposal at less than best consideration (an undervalue).

Disposal at Less Than Best Consideration

20. The Local Government Act 1972 General Disposal Consent (England) 2003 gives Local Authorities the power to dispose of property for less than best consideration.
21. This power is granted on the provision that the undervalue does not exceed £2,000,000 and on the basis that the disposal will help the authority to secure the promotion or improvement of the economic, social, or environmental well-being of its area.
22. YMCA East Surrey provides services to the community in three core areas: health and wellbeing; children and young people; and housing. They intend to use the premises primarily as operational office and training space to support its work in the borough and wider area, with some desks also available for use by other voluntary/charitable sector organisations.
23. Alliance for Better Care is an organisation that brings together GP practices across twelve Primary Care Networks in Surrey and Sussex and works with hospitals, community organisations and the third sector with the aim of transforming how people manage their health in their community. They will use the premises to deliver healthcare services to the local community.
24. It is therefore considered that the proposed disposal will secure the necessary social well-being benefits required to justify a disposal at less than best consideration.
25. The proposed lease will also contribute to the Council's Corporate Plan priority to provide wellbeing services that are accessible to, and meet the needs of, its communities.

Estimate of Undervalue

26. The Property Team has taken the advice of external valuers Wilks Head & Eve regarding the rental and capital value of the property. On the basis of their advice, the capitalised value of the 25-year lease to be granted is £144,000.
27. This is the maximum cost to the Council, or undervalue, that would arise as a result of the grant of the proposed lease.
28. However, there is a break clause as at the 10th anniversary of the term and the Council could recover possession at that time in order to re-let the property. The undervalue on that basis would reduce to £90,000.
29. The undervalue is therefore below the £2,000,000 legislative threshold specified in the General Disposal Consent, enabling the Council to undertake the disposal without specific consent of the Secretary of State for Levelling Up, Housing & Communities.

Developer's Capital Contribution

30. The premises are being transferred to the Council in shell condition along with a payment of £0.379 million to fit-out the premises ready for letting.
31. Although this funding has been provided by the developer under the terms of the Section 106 agreement, the Council will be undertaking the expenditure.

Options

32. The Sub-Committee has four Options:

Option 1

- To approve a disposal of the 13 Marketfield Way community premises at an undervalue, comprising the grant of a 25 year underlease of the premises at a peppercorn rent on the terms set out in the report; and
- To approve expenditure of the £0.379 million capital contribution from the developer on the finishing and fit-out works to the premises.

This is the recommended Option.

The proposed lease will enable the provision of additional community and healthcare services in Redhill and the surrounding area and will avoid the Council incurring an extended period of void costs that would be associated with the property remaining vacant while another tenant is found.

Option 2

- To carry out the finishing and fitting out works but not to grant the lease.

This option is not recommended.

No other potential occupiers have been identified for the premises, which would remain vacant until another community user could be found. During that time, the Council would be liable for void costs of occupation.

Option 3

- To not to carry out the finishing and fitting out works or to grant the lease.

This option is not recommended.

In addition to the reasons given for rejecting Option 2, the Council would be required to return the capital contribution to the developer.

Option 4

- To retain the asset for Council use.

This option is not recommended.

No opportunities for Council use have been identified and under this option the Council would be required to allocate Revenue Budget growth for the operation and maintenance of the premises.

Legal Implications

33. Under the terms of the Section 106 agreement, the Council is contractually obliged to take the lease of the property from the developer.

34. The terms of the head lease from the developer govern the Council's rights and responsibilities in respect of the use of the property. The principal terms of this lease are summarised at paragraphs 0 to 11 above,.
35. Other legal implications, including those connected with the proposed disposal at an undervalue, are covered elsewhere in this report.

Financial Implications

Revenue Budget Implications

36. Once the underlease has been granted, all revenue costs under the Council's headlease of the property will be recoverable from the tenant under the terms of the underlease.
37. The lease to YMCA East Surrey will be granted for term of 25 years but with an option to break at the 10th, 15th, or 20th anniversary of the term, at which time the Council could incur void costs until the property were to be re-let or occupied for operational use.
38. The underlease will produce no additional income.

Capital Programme Implications

39. Based on indicative cost estimates obtained, the developer's capital contribution of £0.379 million is sufficient to cover the cost of the works to fit out the property to a specification that has been agreed with the tenants.
40. Following approval by this Sub-Committee, the capital funding and expenditure will be included in the quarterly Capital Programme updates to Overview & Scrutiny and Executive.

Equalities Implications

41. No equality implications are anticipated to result from this report, as the recommendations do not relate to changes to a service, a new or updated strategy, policy, or project nor will they impact on individuals.

Communication Implications

42. There are no communication implications arising as a result of these recommendations.

Environmental Sustainability Implications

43. The fit out works and heating, ventilation, and air conditioning systems will be designed and specified to minimise carbon emissions and reduce overall environmental impact, as far as this is possible within the constraints of the available budget, the building and development within which the property is situated, and the terms of the lease.

Risk Management Considerations

44. None.

Consultation

45. No consultation has been carried out or is planned in respect of these recommendations.

Policy Framework

46. The proposed lease will also contribute to the Council's Corporate Plan priority to provide wellbeing services that are accessible to, and meet the needs of, its communities

Background Papers

None

Annexes

Annex 1: Location Plan