

NORTH SOMERSET COUNCIL

DECISION OF: THE EXECUTIVE MEMBER FOR FINANCE AND PERFORMANCE

WITH ADVICE FROM: DIRECTOR OF PLACE AND S151 OFFICER



DECISION NO: 20/21 DP 256

SUBJECT: SEAQUARIUM, MARINE PARADE, WSM – REQUEST TO ASSIGN AND VARY LEASE

KEY DECISION: NO

REASON:

The Decision will not result in the Authority incurring expenditure or making savings in excess of £500,000 and will not be significant in terms of its effect on communities living or working in more than one Ward in the area.

BACKGROUND:

The Seaquarium site on Weston sea front is let to Seaquarium Ltd for a period of 99 years from 7/6/1995 at a current rent of £53,250pa with West Midland Safari Park Ltd standing as original Surety. The attraction closed in March 2019 following several years' operating at a loss. The tenant has made efforts to assign the lease without success.

In addition to the main lease the council previously granted the tenant a licence in respect of a small kiosk adjacent to the promenade at an annual licence fee of £8,500pa. This kiosk licence has now expired.

The tenant has not paid rent since closing the attraction and currently has arrears totalling £116,560 calculated up to the end of the 20/21 financial year. The tenant remains liable for these arrears and for the property under the terms of the lease but has advised the Council that it has no funds to meet its liability and the Council has received notice that the company is expected to be struck off the Register of Companies and dissolved at some time after 27th December 2020. In that event, all property vested in the company will pass to the Crown, but it is considered likely that the Crown would then wish to divest itself of the liability for the lease in which case the premises would revert to the Council as freeholder.

Attempts to pursue West Midland Safari Park Ltd for the arrears as the original Surety have proved unsuccessful to date. The Council has been advised that the Surety liability was transferred to a shell company back in 2008 without Council consent and that the new Surety company is also likely to be struck off the Register of Companies and dissolved. It is considered that specialist external legal advice would be required if the council wished to challenge the 2008 restructure that allegedly released the original Surety.

In the meantime, the Council has received a request from the tenant for landlord's consent to an assignment of the lease to AGM Estates Ltd, a wholly owned subsidiary of AGM Holdings Ltd, for use as a restaurant and coffee shop. The proposed assignee has provided brief details of their proposal for the property along with a high-level cost plan totalling £1,497,000 of capital investment.

Following negotiations provisional agreement has been reached to grant landlord's consent to a proposed assignment of the lease from Seaquarium Ltd to AGM Estates Ltd, on the following terms:

1. No payment is to be made between the assignor and assignee in consideration of the assignment
2. The assignee will notify the Landlord and the Land Registry when the assignment has taken place
3. The assignee will reimburse the landlord's costs in dealing with the Land Registry

Provisional agreement has also been reached to vary the lease on assignment to AGM Estates Ltd to:

1. Make provisions for 2 years rent free period from the date of assignment, then £30,000 pa for year 3, then £60,000 pa to 6 June 2025
2. Remove the current RPI rent review provisions and replace them with provisions for the rent to be reviewed to market rent on 7 June 2025, and thereafter every 5 years, subject to the revised rent being no lower than the rent passing prior to each review date
3. Amend the lease plan to better reflect the existing structure
4. Include a covenant against further building on the land
5. Permit the premises to be used as a 'Restaurant and Coffee Shop, together with associated but subsidiary retail and catering facilities.'
6. Remove the requirement for the directors of the assignee tenant company to provide personal guarantees in respect of the obligations under the assigned lease
7. Remove the covenant which currently restricts the sale of alcohol from the premises
8. Give the tenant the option, within 5 years from the date of assignment, to convert the annual rent to a peppercorn rent and extend the lease by a further 50 years, subject to payment of a single premium.
9. Grant landlord's consent for the tenant to remove or replace the kiosk structure at any time.
10. Remove the clause preventing the loading and unloading of vehicles at the front of the premises

As regard to the amount of the single premium payment payable under item 8 above the proposed assignee wishes to agree the level at this stage rather than leave it to a negotiation as and when they exercise the option. It has not been possible for officers to reach an agreement over this payment in the time provided but the proposed assignee has made a non-negotiable offer of £500,000 in the event of their exercising the option to convert the annual rent to a peppercorn rent and extend the lease by a further 50 years.

DECISION:

To authorise officers to grant landlord's consent to a proposed assignment of the lease from the current tenant, Seaquarium Ltd, to AGM Estates Ltd and consent , on assignment, to vary the lease to the terms as outlined and numbered 1 to 10, accepting the proposed assignee's offer to pay a fixed sum of £500,000 for the option as outlined under 8, above

REASONS:

To facilitate the transfer of the lease to a new tenant willing to commit significant capital investment into the seafront to bring forward a new leisure-based facility. The decision also mitigates the potential risk to the Council of taking the property back and being unable to secure a better alternative tenant during which time the Council would have to meet holding costs.

OPTIONS CONSIDERED:

There are two initial options available to the Council, namely;

1. Agree the terms of the assignment and lease variation set out above to allow the lease to transfer to AGM Estates Ltd or
2. Refuse consent for the assignment and eventually take the property back.

If the second option were pursued and the property reverts to the Council, there would then be 2 further options i.e.:

3. Demolition
4. Market the property to let

The first of these options would result in the loss of all income potential and require a capital investment to fund demolition, estimated to be in excess of £500,000. The second would incur risks as it may take some time to find a suitable tenant, with no guarantee that any better terms would be achieved in the open market than those currently offered by AGM Estates Ltd. Whilst vacant, the management of the empty property would incur costs to the Council for business rates, insurance, security, essential repairs etc, estimated at circa £35,000pa

FINANCIAL IMPLICATIONS:

The decision to approve the assignment and lease variation will incur costs to the Council in terms of writing off the current arrears and foregoing rent during the initial rent-free period. However, these costs will be less than those that the Council would face if the property reverted to the Council for either demolition or re-letting.

The option to convert the annual rent to a peppercorn rent and extend the lease by a further 50 years with a single payment of £500k would result in certainty around future liabilities of the building but would create a revenue issue due to the loss of rental income over the 50 years.

COSTS:

The additional costs are detailed in the table below.

	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL
Write off - Current Arrears	- 116,560					- 116,560
Bad debt provision	54,040					54,040
Rent Free Period	- 60,000	- 60,000	- 30,000	-	-	- 150,000
Conversion of annual rent to a peppercorn rent					- 60,000	- 60,000
Revenue Impact	- 122,520	- 60,000	- 30,000	-	- 60,000	- 272,520

It is likely the lease would be transferred within 2020/21 financial year therefore there will be a part year impact in this financial year.

FUNDING:

	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL
Funding from one-off reserves	122,520	60,000	30,000	-	-	212,520
MTFP Growth Required					60,000	60,000
Funding Required	122,520	60,000	30,000	-	60,000	272,520

The write off of existing debt and the rent-free period will be funded from one-off reserves. The total funding requirement is £212,520.

If the option to convert the annual rent to a peppercorn rent and extend the lease by a further 50 years is taken there will be an ongoing revenue impact of £60k from the loss of rent. This would require MTFP growth.

The payment received to convert the annual rent will be a capital receipt of £500k but this cannot be used to mitigate the loss of rent within the revenue position.

LEGAL POWERS AND IMPLICATIONS:

The decision to approve an assignment and lease variation would be carried out under the provisions of the Landlord & Tenant Acts.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS:

No Climate Change or Environmental Impact Assessment has been carried out and it is considered that the Decision will not have a major impact on the Council mitigating climate change. However, investment in the fabric of the building may well result in a greater degree of energy efficiency, and the reuse of the building helps to avoid the carbon used to demolish the structure or to create a new structure for the proposed new use.

CONSULTATION:

The Weston Placemaking Strategy has recently been endorsed by the Council's Executive and its preparation involved listening to the views of over five thousand people. 24% of

people said they wished to see improved shopping and restaurant facilities in the town. The Strategy promotes the reuse of the vacant Seaquarium building for cultural or business activities that meet Placemaking objectives and secure the future of the building.

Consultation in relation to this specific decision has taken place with Executive Members and Statutory Officers of the council.

RISK MANAGEMENT:

The Decision is considered to create no new or additional risks to the Council and, indeed, if successful, would remove a potential risk of the property reverting to the Council

EQUALITY IMPLICATIONS:

No Equality Impact Assessment has been carried out and the Decision is not considered to have any equality implications.

CORPORATE IMPLICATIONS:

The Decision will support the Council's corporate priority of creating a thriving and sustainable place

BACKGROUND PAPERS:

The current lease dated 17th October 1995

SIGNATORIES:

DECISION MAKER(S):

Signed:  Executive Member for Finance and Performance


Date: 18 December 2020

WITH ADVICE FROM:

Signed:  Director of Place

Date: 10 December 2020

Signed:

A handwritten signature in black ink, appearing to read "R. B. Penick", is enclosed within a thin black rectangular border.

S151 Officer

Date: 10 December 2020