

Arrears of Rent and Rate Reviews at Whiterock Close

(Ms. D. Thornton, Principal Solicitor, attended in connection with this item.)

The Committee considered the undernoted report:

“1 Relevant Background Information

1.1 By a 99 year lease dated 29th December, 1995 the council leased approximately 0.3 hectares (0.74 acres) of land at Whiterock Close to the “trustees of Blackmountain Irish Medium School”. Four named trustees signed the lease. Some time in early 2005 the school moved to another site and in June 2006 because of anti-social behaviour on the site, the site was cleared of buildings and levelled. The site has remained undeveloped since.

1.2 At a meeting on 19th June, 2009 the Strategic Policy and Resources Committee provided authority for the council to accept surrender of the 99 year lease from the school trustees. The Committee also agreed to defer a decision on the pursuance of arrears. Following this, council officers prepared a Deed of Surrender for signature by the trustees. The completed Deed of Surrender was returned to the council on 14th January, 2011. As a result, control of the site has now been returned to the council.

1.3 Arrears of Rent

Historically the school paid rent quarterly on demand but around the time the school moved to a new location, and vacated the site at Whiterock Close, regular payments came to an end. The last regular payment was made for the period up to 30th August, 2005. Since then the only payments received were in April and June 2008 to cover three periods in 2006. No payments have been made since.

1.4 Around the time the school moved off site, two of the four school trustees (who were developing an adjoining site with social housing) approached the council to seek variation and extension of the lease to allow elements of commercially orientated development on the site. Under the auspices of the then Head of Recreation and Community Development, discussions on the future of the site ensued with school representatives. During this period the council sought, and were provided with, assurances regarding the payment of arrears of rent, including:

- (i) Letter dated 9th June, 2006 from the school Principal stating the trustees will abide by the conditions of the lease;**

- (ii) At meeting on 18th July, 2006, school representatives (including one trustee) agreed arrears would be settled shortly;
- (iii) At meeting on 16th November, 2006, school representatives agreed to forward a letter setting out proposals for clearance of arrears;
- (iv) Letter dated 16th January, 2008 from one of trustees saying the trustees have agreed to pay outstanding rent arrears; and
- (v) Letter dated 25th November, 2008 from the school Principal saying that some outstanding invoices had been passed for payment.

1.5 In view of the continuing non-payment of rent and other issues, a report was brought to Parks and Leisure Committee in March 2008 in relation to the trustees request for conversion of the their leasehold interest to an unrestricted freehold interest. The report also highlighted potential for termination of the lease and recovery of the site and potential reference to the Lands Tribunal in relation to the outstanding rent review. The matter was deferred for further information. In June 2008 a similar report was brought to Parks and Leisure Committee and was deferred for a further legal opinion.

1.6 In a letter dated 11th March, 2009, two of the four school trustees, confirmed they wished to surrender their interest in the 1995 lease. Following this a report was presented to the Strategic Policy and Resources Committee in June 2009. This sought authority on two matters. Firstly acceptance of the surrender, subject to completion of an appropriate legal agreement and secondly to seek authority to pursue arrears up to the date on which the trustees first indicated in writing that they would surrender the lease (i.e. by letter dated 11th March, 2009). Committee agreed to accept the surrender of the lease and deferred a decision on pursuing arrears to enable further information to be obtained.

1.7 Since the Strategic Policy and Resources decision of June 2009, Legal Services and Estates Management Unit, with the assistance of community representatives, have endeavoured to arrange completion of the formal Deed of Surrender. This has proved a long and difficult process, mainly on account of the uncertain whereabouts of one of the four trustees (the Deed required the signatures of all four trustees named in the original 1995 lease). As mentioned at the commencement of this report the completed Deed of Surrender has only recently been received.

1.8 Rent Reviews

The initial market rent under the 1995 was £3,325 per annum.
The lease provided for reviews of rent every five years.

The first Rent Review fell due on 1st December 1999 and was agreed with the school Principal at £6,500 per annum. The second review with effect from 1st December 2004 was triggered by Estates Management Unit on 29th December, 2004, at which time a proposed revised rental level of £9250 per annum was proposed to the school. With the other issues prevalent at that time, the school did not engage in any negotiations or indicate a level of rent they would be prepared to pay. In light of this, the reports to the Parks and Leisure Committee in March and June 2008 (referred to above) included a request for authority to refer (if necessary) the matter to the Lands Tribunal for decision on the level of revised rent. Committee deferred consideration of these matters. The next reference to Committee in March 2009 sought direction only on the core issues of lease surrender and collection of arrears.

1.9 While Rent Review is an important issue with financial implications for the parties to the lease, the extent of the financial implications are to a large degree influenced by the date up to which Committee decide to pursue Arrears of Rent.

2 Key Issues

2.1 Arrears of Rent

- (i) Rent paid regularly up until 30th August, 2005;
- (ii) The only payments since 2005 were made in April and June 2008 specifically to cover three quarterly invoices from March, June and August 2006;
- (iii) Assurances were provided by school representatives in 2006 and in 2008 that arrears would be dealt with;
- (iv) By letter dated 11th March, 2009 the two trustees who had been in discussions regarding future development of the site agreed to surrender their interest in the 1995 lease;
- (v) Formal Deed of Surrender, signed by all four trustees, received on 14th January, 2011.

Advice obtained from Legal Services is that all four trustees are individually and collectively liable for rental payments. While the financial capacity of the trustees to pay arrears is not known, it is likely the ability of some trustees to make payment, will be greater than that of others.

2.2 Rent Reviews

The date up to which Committee decide to pursue Arrears of Rent will have a considerable influence on the financial impact of Rent Review(s) upon the trustees. In view of this it is proposed to leave the matter of Rent Review for further discussion with the school trustees following the

Committee's decision regarding the date to which Arrears of Rent are to be pursued.

3. Resource Implications

3.1 Financial Implications

Arrears of Rent

Rent is a debt owed and the council is obliged to pursue this to seek the best settlement available. Committee's view on the date up to which the council should seek to recover payment are set out as Options 1 to 7 below. Each quarterly invoice is for a sum of £1,625.

Option 1. Seek payment up to completion of the Deed of Surrender, 14th January, 2011. The amount due up to this date is £29,983.87.

Option 2. Seek payment up to the date when the initial Deed of Surrender, signed by three of the four trustees was received (19th March, 2010). The amount due up to this date was £23,081.93.

Option 3. Seek payment up to the date the Strategic Policy and Resources Committee authorised surrender of the lease, 19th June, 2009. The apportioned amount due up to this date is £19,301.27

Option 4. Seek payment up to the date of the letter from two of the trustees (the two who had been involved in discussions with the council regarding potential commercial development of the site) indicating their willingness to surrender the lease, 11th March, 2009. The apportioned amount due up to this date is £17,525.49.

Option 5. Seek payment of any invoices which pre-date the date the last payment made to the council. This is on the basis that the making of payments was a clear indication of the acceptance of responsibility by the school for the site. The last payment was made on 6th June, 2008 and the outstanding amount due at this date is £12,566.62.

Option 6. Seek payments for amounts up to the date the site was cleared of school buildings. It is believed this was in the week commencing 12th June, 2006. The total amount outstanding as at 12 June 2006 is £3,250.

Option 7. Seek payment up to the date the school left the site for their new premises. This is believed to be circa the end of January 2005. Amounts outstanding up to this date are £nil.

In summary:

Option 1. Rent up to 14 January 2011 - £29,983.87.

Option 2. Rent up to 19 March 2010 - £23,081.93.

Option 3. Rent up to 19 June 2009 - £19,301.27.

Option 4. Rent up to 11 March 2009 - £17,525.49.

Option 5. Rent up to 6 June 2008 - £12,566.62.

Option 6. Rent up to 12 June 2006 - £3,250.

Option 7. Rent up to 31 January 2005 - £nil.

3.2 None of the proposed settlement dates referred to in the above Options would be curtailed by the operation of the Limitation Act 1980 (referred to as the 'Statute of Limitations'). Legal Services advice is that Members will be acting within their powers in determining which ever date Members consider reasonable.

3.3 Following discussions with one of the trustees on 14th March, 2011 it was agreed he would make a written submission for consideration by Committee. This may be available for tabling at Committee.

3.2 Rent Reviews

Financial implications related to Rent Review(s) to be reported to a future meeting of Committee following further discussion/negotiation with the school trustees.

3.3 Human Resources Implications

Resources in Central Transactions Unit will be required to seek payment up to whatever date and for whatever amounts Committee determine are appropriate. Any difficulties in obtaining payments up to the designated date could involve Legal Service resource in an effort to recover arrears due. Further negotiation of rent reviews would draw primarily on Estates Management resource.

3.4 Asset and Other Implications

The continuing non-payment of rent combined with the difficulties in obtaining surrender of the lease have now been brought to an end by completion of the Deed of Surrender and consequent recovery of the site for council use. The asset is now available for the potential benefit of the local Community and users of the adjoining council facilities.

4 Equality and Good Relations Considerations

4.1 No known equality or good relations considerations.

5 Recommendations

5.1 Recommendations on the two issues i) Arrears of Rent; and ii) Rent Review; are set out separately below. Members are recommended to provide relevant authority on each of these separately.

(i) Arrears of Rent

The site was leased for 99 years for school purposes. Around the time the site was vacated by the school, two of the trustees entered discussions with the council to seek an extension of the term of the lease and widen the terms of the lease to facilitate elements of commercial development. During this period regular payments of rent ceased, although the council received assurances from the school Principal and the relevant two trustees regarding payment of arrears. The most recent letter suggesting arrears would be paid is dated 16th January, 2008. A subsequent letter dated 25th November, 2008 said that some outstanding invoices would be passed for payment, but gave no undertaking as to which invoices or how much of the arrears would be cleared. In view of the various assurances it is considered the council seek payment of arrears up to the date on which a letter was received from the two relevant trustees confirming their intention to surrender their interest in the lease (i.e. letter dated 11th March 2009). Option 4 is therefore recommended for Committee approval subject to the further approval of the Strategic Policy and Resources Committee in accordance with Standing Orders 46 and 60.

(ii) Rent Review

Members are asked to note that further discussions between officers and the trustees regarding the Rent Review(s) will be initiated following the Committee's decision on the principal issue of Arrears of Rent and that a further report will be brought to Committee within two months to update members on progress regarding Rent Review.

6 Decision Tracking

Director of Parks and Leisure to liaise with the Director of Property and Projects with a view to bringing the matter of arrears to the Strategic Policy and Resources Committee within two months of the ratification by full council of the decision of this Parks and Leisure Committee. Director of Parks and Leisure to liaise with Director of Property and Projects to bring a report on Rent Review(s) to the Parks and Leisure Committee within two months."

After discussion, it was

Moved by Councillor Corr,
Seconded by Councillor McCarthy,

That the Committee agrees to adopt Option 7 contained within the report.

Amendment

Moved by Councillor Stoker,
Seconded by Councillor J. Rodgers,

That the Committee agrees to adopt Option 4 contained within the report.

On a vote by show of hands three Members voted for the amendment and nine against and it was accordingly declared lost. The original proposal standing in the name of Councillor Corr and seconded by Councillor McCarthy was thereupon put to the meeting with nine Members voting for and none against and it was accordingly declared carried.