

LOCAL GOVERNMENT ACT 2000

REGISTER OF URGENT
DECISIONS OF THE EXECUTIVE

NORTH DEVON COUNCIL CONSTITUTION
– Appendix 12



Reference No: 2014/01

1) SUBJECT: The Mutual Surrender of the Lease of Unit 21 The Old Ice Factory

2) REQUESTED DECISION: That the Head of Property and Technical Services be delegated powers to negotiate terms and accept a surrender of the current lease to Mr Brian Stockwell of Unit 21 The Old Ice Factory Rolle Street Barnstaple

3) STATEMENT OF THE REASONS FOR THE REQUEST AND WHY IT IS URGENT:

The tenant's use of the accommodation, martial arts, is no longer compatible with the building.

There are now significant vibration and noise issues, causing health & safety concerns for the tenants on the ground floor. This is also presenting a potential risk to the structural integrity of the building.

The tenant only has one year left to run on their existing lease. In view of the problems experienced with their occupation, we would not be in a position to renew the lease upon expiry and would have to oppose the granting of a new tenancy.

The tenant has found alternative premises and in order to secure them, they need immediate confirmation from the Council that we can accept a surrender of their lease, notice being with effect from 24th March and termination being the 26th June 2014. Time is therefore of the essence and we need a decision before the 24th March 2014.

In order to bring this lease to an end, an urgent decision is required to permit an early surrender.

Whilst the surrender will result in a loss of rent of approximately £3,500.00 pa and a potential rates liability of £2,000 pa, along with some limited utility charges, it will prevent us having to deal with costly management and health and safety issues in terms of the safe occupation of the building for all the tenants.

Once vacated, this accommodation could also provide the Council and Museum with greatly beneficial storage space.

At this time we understand the accommodation is suitable for static storage, subject to verification by Building Services. We would need to obtain a change of use to B8 storage in planning terms, although we are advised by Planning this is unlikely to be a major issue.

4) FINANCIAL IMPLICATIONS: (NOTE: Please state if there are any financial implications. If so, state if there are sufficient funds within the agreed budget. If there are not sufficient funds, please state how the decision will be financed)

The Council will lose the income from the current tenant (£3,500 pa), with effect from 26th June 2014. Although, we would lose this in a years time anyway, as we are not in a position to renew the lease to the existing occupier.

As the tenant will have committed to their new premises as from 24th March 2014, which requires a considerable amount of work and full rent, the tenant has requested a rent reduction between the period of 24th March 2014 and 26th June 2014. Acceptance and the value of this, is subject to negotiation.

By accepting a surrender from the existing occupier we avoid the cost implications of having to repair damage and the costs of investigating and potentially putting right the issues with the building if they stay in occupation. At this stage such costs are unquantifiable, but we understand that an initial instruction to a Structural Engineer could be in excess of £1,000.00, prior to any works actually being undertaken.

There are the additional potential costs in repairing and replacing the lights in the other tenants' units, which have been damaged or which need replacing from a health & safety perspective.

This accommodation presents a very useful and cost effective storage opportunity for the Council, in terms of relocating existing storage from the 9th floor or freeing up accommodation in the museum.

Should the Council occupy the property it will incur a rates liability of approximately £2000 pa.

If not required by the Council, once vacant, the accommodation can be relet. There will be a letting fee, and a potential delay in the unit becoming income producing.

By accepting the surrender at this time on the terms proposed, we avoid a potential situation whereby we have to pay the tenant compensation for requesting they vacate the property and for any improvements they have carried out.

5) ANY ALTERNATIVE OPTIONS CONSIDERED AND REJECTED:

If the tenant remains in occupation, we would need to replace the lights on the ground floor from a health & safety perspective which is likely to cost £915.00 plus VAT and is not likely to be a long term solution.

Instructing a structural engineer to investigate the problems caused by excessive vibration, to establish how this can be resolved and the building improved. However, the costs implications of this are likely to be in excess of £1,000.00, without any actual improvement works being carried out.

Reinforcement of the floor is likely to be completely cost prohibitive and may not cure the problem. The continuation of the existing use may lead to a continued

deterioration in the fabric of the building and a risk to the safe occupation of other tenants.

6) A RECORD OF ANY CONFLICT OF INTEREST DECLARED:

No conflict established

7) A NOTE OF ANY DISPENSATION IF GRANTED:

Not applicable

8) THE CONSENT OF THE CHAIRMAN OF THE OVERVIEW AND SCRUTINY COMMITTEE WAS OBTAINED ON:

20th March 2014

9) LIST OF BACKGROUND PAPERS (but not including published works or those which disclose exempt or confidential information (as defined in rule 10 of appendix 15 (Access to Information Procedural Rules) and the advice of a political advisor):

None

10) CONSULTATION UNDERTAKEN:

The following have been consulted on this urgent decision:

Consultee	Consulted Yes/No	Date
Executive Member Councillor Brian Greenslade	Yes	19 th March 2014
Ward Member(s) Councillor Mair Manuel	Yes	19 th March 2014
Chief Executive	Yes	19 th March 2014
Head of Service (name) Diana Hill	Yes	19 th March 2014
Legal Ken Miles	Yes	19 th March 2014
Finance Jon Triggs	Yes	19 th March 2014

11) APPROVED BY DECISION TAKER

Councillor Greenslade - Leader

12) NOT APPROVED BY DECISION TAKER

13) DATE THAT DECISION WAS TAKEN:

20th March 2014

GUIDANCE NOTES

NOTE: ALL REFERENCES TO SUB-PARAGRAPHS REFER TO APPENDIX 12 OF THE CONSTITUTION

PROCEDURE FOR DECISIONS WHICH MAY BE CONTRARY TO ADOPTED PLANS AND STRATEGIES (INCLUDING THE BUDGET):

1. The Chief Executive must notify the Leader/Deputy Leader/Other Executive Member.
2. The Leader/Deputy Leader/Other Executive Member must approve the use of the procedure and notify the Chief Executive of his approval together with his reasons.
3. The Chief Executive must notify the Chairman of the Overview and Scrutiny Committee or if unable to act the Chairman of Council or if absent the Vice-Chairman to seek his determination as to whether the conditions detailed in paragraph 1.1 (b) (i), (iii) or (iv) are satisfied.
4. The Chairman of the Overview and Scrutiny Committee or if unable to act the Chairman of Council or if absent the Vice-Chairman, must confirm to the Chief Executive in writing that the proposed decision is urgent and that either of the conditions identified in paragraph 1.1 (b) (iii) or (iv) have been satisfied, the Chief Executive shall advise the Leader, Deputy Leader or other member of the Executive that the decision may be taken by a person or body possessing a relevant power to make such a decision.
5. If a decision is specific to a Ward, efforts should be made to ascertain the views of the local Councillor (s).

PROCEDURE FOR DECISIONS WHICH ARE WITHIN THE ADOPTED PLANS AND STRATEGIES (AND CAN NOT BE INCLUDED IN THE FORWARD PLAN):

1. If the Chief Executive considers that the conditions in sub-paragraph 2.1 are satisfied, he must notify the Proper Officer of the need for the decision, the reasons why it was impracticable for it to be included in the Council's Forward Plan, and whether or not the decision is required to be taken within five working days.
2. On receiving the notification, under sub-paragraph 2.3 and where satisfied that no decision is required to be taken for five working days, the Proper Officer shall:

- (a) notify in writing the Chairman of the Overview and Scrutiny Committee or if there is no such person, each Member of the Overview and Scrutiny Committee, with particulars of the proposed decision, the reasons for its urgency and the reasons for it being impracticable to include in the Council's Forward Plan;
 - (b) make available for public inspection at the Council offices a copy of the written notice given to the Chairman of the Overview and Scrutiny Committee about the decision.
- 3. Decisions to which sub paragraph 2.4 applies, shall not be made until after five working days have elapsed following publication of the proposed decision under 2.4 (b) of Appendix 12 in the Constitution.
- 4. Where it appears to the Chief Executive that an urgent decision-
 - (a) meets the requirements of sub-paragraph 2.1 of Appendix 12 of the constitution; and
 - (b) because of the urgency cannot be deferred for five working days,he shall seek the agreement and confirmation in writing on both those points from-
 - (c) the Proper Officer; and
 - (d) the Chairman of the Overview and Scrutiny Committee or in his absence the Chairman of Council or if there is no Chairman the Vice-Chairman of Council;and the person or body possessing a relevant power to make the decision may proceed to make it only when the necessary agreement and confirmation have been obtained.
- 5. If a decision is specific to a Ward, efforts should be made to ascertain the views of the local Councillor (s).