



North Devon Council

Report Date: 6 June 2022

Topic: Property Management Contracts for Green Lanes Shopping Centre

Report by: Director of Resources and Deputy Chief Executive

1. INTRODUCTION

- 1.1. The Council acquired Green Lanes Shopping Centre in November 2021. Full Council approval in June 2021 delegated authority to the Chief Executive after consultation with Group Leaders and the Lead Member was given to appoint managing agents and to enter into multiple contracts for the asset, property and facilities Management of the Centre.
- 1.2. Three contracts were put in place for a period of up to 12 months each to allow the transition of the asset to the Council and for Officers to gain understanding of the operational requirements of the business moving forwards. This report sets out the options for the requirement of these contracts beyond the existing contract terms.
- 1.3. Consideration will also need to be given in the future regarding the wider procurement and contract implications of this asset in terms of potential changes to the constitution to accommodate this commercial property; procurement of contracts on the Councils behalf and recording these contracts under both Transparency Regulations and Public Contract Regulations.

2. RECOMMENDATIONS

- 2.1. That Contract Procedure Rules be waived and the three contracts with Praxis Real Estate Management outlined in section 4.4 be extended by a period of up to 14 months (November 2023) from the date of their current expiry.

3. REASONS FOR RECOMMENDATIONS

- 3.1. The current contracts expire in September 2022 and November 2022 and to ensure continuity an appropriate procurement route needs to be taken and this allows for the new contracts to co-terminate simultaneously.
- 3.2. There is insufficient time to run a full open tender procurement process and there does not appear to currently be a framework agreement that the Council can access and includes our incumbent supplier, to allow them an opportunity to win a longer term contract, and which covers the subject matter that would enable an award through this route.
- 3.3. The above timeframe allows officers to investigate a longer term arrangement through a framework agreement award mechanism or an open tender procurement.

4. REPORT

- 4.1. Green Lanes Shopping Centre asset has over 30 tenants, a service charge, service contracts and a team of staff. The nature of the asset means there is constant fluidity in terms of its management requirements. There are also constant requirements from letting advice and on tenant mix, which is a property agency function, also supported by the Praxis team.
- 4.2. Shopping Centre Management is an area of specific expertise, which is related to the size of the asset, the nature of the current tenant mix and specific occupiers.
- 4.3. Members will recall the report and presentation to Full Council in June 2021 where it was outlined that for the Centre to be a successful and viable asset it would require a mix of both internal resource from the Council's Property team and an external asset management expertise to support and drive the Centre forwards. Praxis Real Estate Management have demonstrated appropriate levels of support in this respect over the last six months and run comparable centres for other Local Authorities and within their own portfolio.
- 4.4. The three contracts that are with Praxis Real Estate Management for:
- Managed Services Agreement expires 11/11/22;
 - Sole Agency Agreement expires 06/09/22;
 - Asset and Property Management Agreement expires 30/09/22.
- 4.5. At this early stage in the ownership of this asset, we need to ensure we have ongoing support of an external property management facility to ensure the property can continue to function on all levels. This is needed for the day to day running of the centre including the employment of staff, but also from a strategic level in terms of regeneration and refurbishment opportunities.
- 4.6. The options open to the Council for the above contracts are as;

Waiving Contract Procedure Rules

This route would permit the Council to enter into a contract with its preferred supplier, Praxis Real Estate Management. It is likely that this would be on existing terms with amended end dates, effectively acting as an extension or a new contract to the existing arrangements in place. To minimise the risk of procurement challenge through this option the proposal is to extend for a period of up to 14 months (November 2023). A contract of this length is unlikely to be attractive to alternative suppliers and it will provide sufficient time to allow all suppliers to have a fair and equal opportunity to tender for the opportunity to manage Green Lanes Shopping Centre on the Council's behalf.

Appoint through a Framework Agreement

A Framework Agreement is a pre-procured contract by a central purchasing body, normally with multiple economic suppliers who are pre-assessed at the time of procuring the framework agreement. There is the ability to carry out further competitions or direct award through existing frameworks. When procuring through a framework agreement pre-agreed Contractual Terms and Conditions are identified and the Council would generally be required to hone a pre-existing specification to create a bespoke contract for itself. A contract is then “called off” the framework agreement using this route to market. Framework agreements save time both from a procurement and legal services perspective because the procurement process is mostly completed for Council and contract terms and conditions are normally already prepared.

This is the route that officers would favour, albeit the Council’s incumbent supplier, Praxis Real Estate Management is not presently listed on any framework agreement which the Council can use and is unlikely to be in time for the Council’s need to deal with the current contract expiry dates in 3-4 months’ time.

Procurement through an open tender

An open tender could be prepared and run and this would require creation of a specification. It would be the most resource intensive as Legal and Procurement teams would need to prepare bespoke contractual terms and additionally all relevant procurement documentation would need to be prepared to comply with the Public Contracts Regulations 2015.

It would also require advertisement on Find a Tender Service (formerly OjEU) and additional resources from procurement. On making enquiries the Council has had interest from other authorities that own shopping centres to join in a procurement of this kind if the Council runs one. This implies that they do not currently have a tender-procured contractual arrangement in place. This could conceivably result in good value overall if run jointly but could also make the procurement more complex. We also receive considerable direct support from the supplier, which could be diluted if the resource is spread across more authorities and this would need to be carefully worked through to determine if this achieves better value for money.

The Council would need to consider an appropriate tendering route in compliance with the Public Contracts Regulations 2015, although at present it would most likely be an open tendering process as this is the most straightforward procedure and does not include a shortlisting process.

- 4.7. The three contracts in place all expire on different dates due to the start dates commencing at different points in time. This was a result of some coming into effect on exchange of contracts at the time of acquisition and some on completion of the purchase. Discussions have taken place between officers within Legal, Procurement and Property as to bringing these contracts in line so they all end on the same date. We would look to achieve this if members approve the recommendation in 2.1
- 4.8. There are always associated risks with procurement award of this nature and the Council aims to mitigate this by limiting the above award to extending the arrangements by around a year, rather than a much longer contract award. The substantive risk from this would be firstly the contract being declared ineffective and secondly damages being awarded to a challenging supplier. This requires that the management of Green Lanes (for this contract period) is an attractive enough prospect for a competing supplier to submit a challenge.
- 4.9. The best route of averting such a challenge while taking this approach is to flush the risk out before committing. Therefore if members approve the recommendation in 2.1; that if this route is taken that a Contract Notice is also published detailing the Contract that is to be awarded to Praxis in advance. Any challenge under the Public Contracts Regulations 2015 must be made within 30 days of notice of it being published so if such publication is made more than 30 days in advance of the contract being entered into then should a challenge be received then the contract could be pulled before it is entered into. Due to the short-term length of contract being suggested this risk is reduced because the Council will almost immediately commence the procurement process for the long term contract which will be the real focus of any prospective supplier's attention, however the approach suggested here will mitigate this further.
- 4.10. The relationship with Praxis has been extremely positive between Council officers and both the Centre's staff and tenants and a significant amount of work and investment by all parties has gone into the first six months of occupation to build the foundations moving forwards with the result being that 5 of the vacant units being successfully let, substantial interest generated in other vacant units, as well as plans for capital enhancements being mapped out.
- 4.11. It is important that this continuity builds to ensure we maximise the potential of this relationship in these early years and allow the agent to fully engage with the tenants; understand the operational requirements of the asset and ensure optimum rent and service charge collection; and therefore the recommendation is to extend the current contracts by a period of up to 14 months from the date of their current expiry. During this period, the team will

carry out an ongoing procurement route through a framework agreement or tender process for the longer term contractual arrangements.

5. RESOURCE IMPLICATIONS

5.1. The value of the three contracts outlined in 4.4 are;

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| ○ Managed Services Agreement | £437,778 (Year 1) |
| ○ Sole Agency Agreement | £3,000 minimum fee per letting |
| ○ Asset and Property Management Agreement | £83,330 and £85,000 respectively |

5.2. The Managed Services and Property Management Fees are recharged through to tenants who occupy the units within the Shopping Centre as part of the Service Charge. An element of this is borne by the Council for any empty units as this is a responsibility of the landlord until such time as the unit is let. The revenue impact of the landlord responsibilities has already been included within the Revenue Budget 2022-23 approved by members in February 2022.

5.3. The Agency/Letting Fees and Asset Management agreements are directly chargeable to the Council and likewise forms part of the approved 2022-23 Revenue Budget.

5.4. There will be officer time required from Legal, Procurement and Property teams in preparing the contract specification and contract terms, this will be resourced internally from within existing teams.

6. EQUALITIES ASSESSMENT

6.1. There are not any equalities implications anticipated as a result of this report.

7. ENVIRONMENTAL ASSESSMENT

7.1. No direct implications as result of this report, any emerging capital projects or enhancements at Green Lanes Shopping Centre through the asset management would be assessed individually.

8. CORPORATE PRIORITIES

8.1. What impact, positive or negative, does the subject of this report have on:

- 8.1.1. The commercialisation agenda: the acquisition of Green Lanes Shopping Centre supports this priority with the reinvestment of revenues back into the Centre and other wider Regeneration projects across North Devon. Having an effective asset management provision ensures we deliver upon this objective.



8.1.2. Improving customer focus: asset management opportunities to fill vacant retail units and also potentially look at longer term provision of public facing services within areas of the Centre support this priority by maximising the space and services being offered.

8.1.3. Regeneration or economic development: the core objective of buying the Centre was to complement wider Regeneration within the town centre and gain control of the types of provision within the Centre. The asset management provision will complement and work with the Council on these strategic plans.

9. CONSTITUTIONAL CONTEXT

9.1. Part 3, Annexe 1 para 1(b) and Part 4, Contract Procedure Rules, para 4.3(b)

9.2. Delegated power

10. STATEMENT OF CONFIDENTIALITY

This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

11. BACKGROUND PAPERS

The background papers are available for inspection and kept by the author of the report.

12. STATEMENT OF INTERNAL ADVICE

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers:

Jon Triggs, Director of Resources and Deputy Chief Executive