

Notification of an Urgent Executive Decision: Lease between SSDC and Somerset County Council (SCC) - in relation to the first floor of Brympton Way Offices, Yeovil

Executive Portfolio Holder: Val Keitch, Strategy & Policy
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Purpose of the Report

1. The purpose of this report is to notify Members of an urgent executive decision made by the Chief Executive in consultation with the Council Leader and Portfolio Holder for Property, Climate Change and Income Generation to vary the lease with Somerset County Council for the first floor of Brympton Way offices (by way of deed of variation) to include a mutual rolling break clause, being one exercisable by either party at any time from 1 April 2019 during the remainder of the lease term from April 2019. The notice period of 12 months to remain.

Forward Plan

2. This report did not appear on the District Executive Forward Plan due to the urgency of the decision to be taken.

Background

3. The lease between SSDC as Landlord and SCC as tenant for the first floor of Brympton Way offices provided for a break option which could be exercised by either party up to 2nd October 2018. After such date the option to break would be lost by both parties.

Recommendation

4. That District Executive note the urgent executive decision made by the Chief Executive in consultation with the Council Leader and Portfolio Holder for Property, Climate Change and Income Generation to vary the lease with Somerset County Council for the first floor of Brympton Way offices (by way of deed of variation) to include a mutual rolling break clause, being one exercisable by either party at any time from 1 April 2019 during the remainder of the lease term from April 2019. The notice period of 12 months to remain

Report

5. Discussions between SSDC and SCC took place in the immediate run up to 2 October 2018 and it was concluded that neither party wished to end the lease at this time, but that both parties wished to have the ability to do so at some point during the remaining six years which the lease otherwise has to run. It was noted that the lease continues to work for both parties in all other respects and should continue, but that in the absence of the break clause being exercised, going forward neither party would have individual flexibility to end the lease before the expiry of the remaining 6 years of the term; though the lease

could be determined by mutual agreement in the future in the event of a change in one parties circumstances and if the other party were willing. This would mean that both parties would be held to the remainder of the lease term, apart from that SSDC could potentially terminate if SCC were in breach of the lease provisions. It was therefore agreed in principle between the parties that having the ability to terminate on notice could be of benefit to each party, removing the need to rely on future negotiations with one another and therefore providing certainty.

6. As the ability to break was lost as at 2 October 2018, and it having been noted by the S151 Officer and Monitoring Officer that there is no delegation in our Financial Procedure Rules to officers to vary a lease of this value, it was considered that, given the timing of the expiry of the break, the current mutual agreement between SSDC and SCC and the need to formalise such agreement to provide future flexibility, an urgent decision by the Chief Executive in consultation with Council Leader and the Portfolio Holder was required. An urgent decision was therefore taken by the Chief Executive in consultation with the Council Leader and the Portfolio Holder to vary the lease (by way of deed of variation) to include a mutual rolling break clause, being one exercisable by either party at any time from 1 April 2019 during the remainder of the lease term from April 2019. The notice period of 12 months to remain. A short period of 7 days from 2 October was agreed for completion of the variation to allow respective parties to draft, negotiate and conclude the variation. The variation to the lease has now been completed.

Financial Implications

7. There are no direct immediate financial implications resulting from this amendment, as SCC will continue as tenant for the first floor of Brympton Way office.
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