

Agenda Item No:	11	
Committee:	Cabinet	
Date:	20 November 2023	
Report Title:	Wisbech Pavilion Lease Agreement	

1 Purpose / Summary

- 1.1 To advise Cabinet of the proposed management arrangements for the new Wisbech Park Pavilion and seek authorisation to lease the facility at below market value.

2 Key Issues

- 2.1 As Cabinet is aware, a new pavilion is being built in Wisbech Park. The building will consist of external public toilets, a café, a changing places toilet, office and community room. The facility is primarily funded by FDC with additional grants from CPCA and CCC as well as a changing places grant from the Department for Levelling Up.
- 2.2 Building construction is due to complete in mid-December.
- 2.3 FDC has been in discussions with Wisbech Town Council regarding the management of the new facility. It is considered that management by the local Town Council is the best option as it will provide a locally focussed approach, ensuring community needs are catered for. Other options have not been considered, as local council management offers a community focus that another partner is unlikely to offer.
- 2.4 Whilst the Town Council already provides toilets in Wisbech Park, it is anticipated that this new facility will replace the current (dated) provision, with Town Council funding the management of the new toilets.
- 2.5 Heads of Terms for a 35-year lease have been agreed. FDC will remain responsible for the asset and repairs to major items such as the roof etc, with the Town Council taking care of day-to-day management and maintenance.
- 2.6 As a community facility a lease at a peppercorn rate of £1 p.a. is the usual approach. As this is below the market rate, Cabinet is required to confirm that this arrangement is acceptable.

3 Recommendations

- 3.1 That Cabinet confirms that Wisbech Town Council and Fenland District Council should enter into a 35-year lease for the management of the pavilion in Wisbech Park and instructs officers to put the necessary legal agreement in place.

- 3.2 That Cabinet agrees to a lease at a rate of £1 p.a be included in the above agreement, noting that this is below market rate, but is typical of agreements for this type of community facility.

Wards Affected	Wisbech wards
Forward Plan Reference	KEY/24AUG23/05
Portfolio Holder(s)	Cllr Peter Murphy (Portfolio Holder for Open Spaces) Cllr Ian Benny (Portfolio Holder for Assets)
Report Originator(s)	Phil Hughes phughes@fenland.gov.uk
Contact Officer(s)	Phil Hughes phughes@fenland.gov.uk Carol Pilson cpilson@fenland.gov.uk
Background Papers	16 March 2023 Cabinet Report Key Decision ref; KEY/07DEC22/01

1 BACKGROUND AND INTENDED OUTCOMES

- 1.1 Report to Cabinet highlighting the option to lease the new Wisbech Park Pavilion to Wisbech Town Council for 35 years at a peppercorn (£1 p.a.) rent. As a local asset, the Town Council is in the best position to ensure that this local asset performs for local people. This is particularly true, given the Town Council's key summer festival that runs in the park, as well as other local Members' involvement in other community event run within the park.

2 REASONS FOR RECOMMENDATIONS

- 2.1 The intention for the management of the pavilion has always been to install a more local management team and not FDC. Wisbech Town Council was approached initially, and the Town Council has agreed to manage the pavilion.

3 CONSULTATION

- 3.1 FDC consulted extensively with Wisbech Town Council (WTC) regarding the plans for the pavilion, including an officer attending a formal meeting of WTC to present designs.
- 3.2 As construction commenced, talks between the two Councils have continued regarding management of the facility, culminating in WTC making a formal decision to take on the management of the Pavilion, subject to FDC's Cabinet approval.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Whilst Wisbech Town Council (WTC) has agreed to manage the facility on a peppercorn lease basis, FDC did have the option to engage more widely and see if a third-party, commercial business would be interested in the opportunity to manage the pavilion. Whilst it is considered that the local Town Council managing the facility would be in the best interest of the local community, that is not to say that a third party will not be involved. WTC will manage the facility but intends to sub-contract the café operation to a third-party firm that is experienced in providing this service to the community. This mixed approach to the management of the pavilion should give the local community the best of both worlds in terms of a commercial café operation, with a community focussed town council running the building.

5 IMPLICATIONS

5.1 Legal Implications

- 5.2 This is a Council-to-Council agreement, governed by a lease. The legal implications of this approach have been considered, with third-party specialist legal advice sought in terms of the application of the Public Procurement Regulations.

- 5.3 FDC is able to either lease the pavilion to the Town Council or let a contract as a concession contract under the Concession Contracts Regulation 2016. The current threshold for services concessions is £5,336,937 so this facility will fall considerably below this value. This means that the Regulations don't apply and FDC is approaching this as a lease arrangement.

5.4 Financial Implications

- 5.5 By leasing the facility to the town council at a peppercorn rent, FDC is potentially foregoing the opportunity of a lease at a commercial rate with a third-party business.
- 5.6 However, it is considered that because this is a new venture, the number of businesses who would take the risk of running the pavilion, including the public toilets, from scratch would be limited. Any arrangement with a third-party business would likely be at a negligible rental value to mitigate the risk of the business start-up.
- 5.7 The approach of a peppercorn rental to WTC is unlikely to be much different to any commercial arrangement that FDC could negotiate but does mitigate the cost to FDC in terms of renter turnover and finding new businesses to take over the sub-let café.

5.8 Equality Implications

- 5.9 N/A

6 SCHEDULES

- 6.1 Heads of Terms

Heads of Terms: 11 October 2023

Version 4

These Heads of Terms are subject to contract

Property Address	<p>New Build - Pavilion Building, Wisbech Park, Park Road, Wisbech.</p> <p>Being part of the land registered under freehold title number CB335221.</p>
Demise	<p>Area/Scale Plan (to be provided), Pavilion to be outlined in red and FDC land outlined in blue. Right of access over paths in brown.</p> <p>The Pavilion Building and its curtilage only. Reference to the planning permission plans attached. For avoidance of doubt, the paths and grassed area around the pavilion will remain under FDC responsibility.</p>
Landlord	<p>Name of Organisation: Fenland District Council Fenland Hall County Road March PE15 8NQ.</p> <p>Main contact: Bill Tilah, Principal Estates Surveyor.</p> <p>E-mail: btilah@fenland.gov.uk Mobile: 07935014469.</p>
Landlord's Solicitor	<p>Name of Organisation: Legal Services, Peterborough City Council, Town Hall, Bridge Street, Peterborough, PE1 1HG DX 12310 Peterborough 1 E-mail: TBC Telephone: TBC Mobile: TBC.</p>
Tenant	<p>Name of Organisation: Wisbech Town Council Town Hall 1 North Brink Wisbech PE13 1JR.</p> <p>Contact name: Terry Jordan, PSLCC, Town Clerk.</p>

	Tel: 01945 461333 . E-mail: clerk@wisbechtowncouncil.org.uk			
Tenant's Solicitor	Name of Organisation: Please confirm details if using solicitor Contact name: Address: Email: Telephone: Mobile:			
Rent	£1 per annum exclusive of VAT. A peppercorn.			
Rent Free Period	N/A.			
Type of agreement	Long Lease.			
Landlord's/Tenant's Initial Works	Landlord to build premises and handover to Tenant upon completion.			
Lease length and start date	35 years. Start date from satisfactory handover on completed building.			
Break Clauses or renewal rights	Tenant break option every six months after the lease completion date (with six months prior written notice), within the first three years of the lease. Thereafter, twelve months prior written notice, actionable annually on the anniversary date of lease completion.			
1954 Act Protection	Licence to be contracted out of the Landlord and Tenants Act 1954.			
Rights reserved	Landlord's right to enter property, for the purposes of repairing and maintaining the external parts of the premises. With reasonable prior notice.			
Rent Reviews	N/A.			
Assignment/Subletting		Prohibited	Permitted with Landlord's consent	Permitted Without Landlord's consent
	Assignment of whole	X		
	Sub-lease of whole	x		
	Sub-lease part		x	
	Concession	X		
	Group Sharing	X		
Services and service charge	N/A.			
Repairing Obligations	Tenant - Internal repair and maintenance only. - To include the roller shutters (as these are designed into the lintel area of the buildings and tenant has main control			

	<p>over operation</p> <p>Landlord – external repair and maintenance only, for the fabric of the building. For the avoidance of doubt, this is covering the replacement and structural issues related to the roof / windows and doors,. But not the day-to-day maintenance (such as cleaning / graffiti removal, gutter and downpipe clearance, repair of damage caused by tenant or permitted users of the premises). Matters covered by the building insurance such as storm damage / flood / earthquake etc excluded from tenants responsibility</p>			
Schedule of Condition	FDC to prepare and provide an internal photographic record of condition, on handover for agreement before lease completion.			
Alterations		Prohibited	Permitted with Landlord's consent	Permitted Without Landlord's consent
	External	x		
	External Structural	x		
	Internal Structural		x	
	Internal non-structural			x
Permitted Use	Use of the Property for a community hub, meeting room, café and public toilets.			
Hours	Tenant to make reasonable efforts to keep the Pavilion open during "usual" business hours.			
Insurance	<p>Landlord to insure the building.</p> <p>Tenant to hold contents and public liability insurance (for a minimum sum of £5,000,000).</p>			
Dilapidations	Return the property in no worse condition than taken, allowing for fair wear and tear. Use of the agreed internal photographic schedule of condition for reference.			
Rates and Utilities	Tenant is responsible for all rates and utilities costs associated with the premises.			
Costs	The Landlord will pay all costs associated with implementing this agreement. If the tenant chooses to use a solicitor, associated costs should be fair and reasonably incurred.			
Conditions	<p>FDC to provide all relevant statutory testing and certification documents at time of handover.</p> <p>FDC to provide copies of any warranties applicable to the building and its fixtures and fittings.</p>			

Other	<p>The sub-let is envisaged as being the café and office elements of the building.</p> <p>The Tenant of the Pavilion to operate appropriate advertising and fair contracting processes in relation to sub-letting of any elements of the building.</p>
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