


Agenda Item No:	11	
Committee:	Cabinet	
Date:	15 th November 2024	
Report Title:	Potential Lease Renewal - Chapel Road Car Park, Wisbech	

This item comprises EXEMPT INFORMATION which is not for publication by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act, 1972 (as amended).

1 Purpose / Summary

- 1.1 To update members on the issues surrounding the current and continued occupation of the car park at Chapel Road, Wisbech following previous instructions given to officers at a Cabinet meeting on 15 July 2024 (Minute CAB10/24 refers) and subsequent negotiations with the National Trust and the receipt of enhanced legal advice.

2 Key Issues

- 2.1 Fenland District Council (FDC) occupies the car park under the terms of a lease from the National Trust (NT) for a term commencing on the 25th March 1964 and which expired on the 24th March 2024. As a result, FDC now occupy the site by way of a tenancy at will.
- 2.2 Protracted negotiations with the National Trust have failed to reach a satisfactory conclusion as defined by Cabinet.

3 Recommendations

- 3.1 Members are requested to note the update on lease negotiations as reported herein.
- 3.2 Members are asked to approve the lease terms as now reported and authorise the Head of Property, Assets and Major Projects in consultation with the S151 Officer and Portfolio Holder for Revenues, Benefits and CPE to complete the required legal documentation.
- 3.3 Members are requested to give a steer on the capital works referred to in section 2 for inclusion in the draft budget for 2025-26.

Wards Affected	All Wisbech Wards
Forward Plan Reference	
Portfolio Holder(s)	<p>Cllr French - Portfolio Holder Revenues & Benefits and CPE</p> <p>Cllr Benney - Portfolio Holder, Economic Growth and Skills</p>
Report Originator(s)	Mark Greenwood – Head of Property, Assets and Major Projects
Contact Officer(s)	<p>Garry Edwards – Engineering Manager</p> <p>Bill Tilah – Principal Estates Surveyor</p> <p>Layna Warren - Streetscene & Markets Team Leader</p>
Background Papers	Confidential Cabinet Paper 15 July 2024 – Copy attached at Appendix 1

REPORT

1 BACKGROUND

- 1.1 Members will recall that in a previous report presented on the 15 July 2024 (Copy attached as Schedule 1) the history of the current occupation was detailed, however, in summary the current lease from the National Trust was for a term of 60 years and this came to an end on the 24th March 2024.
- 1.2 Members will recall that they previously instructed officers to proceed with negotiations with a view to seeking a minimum 40-year term with ongoing consent for the fairs. The red line position was to be a lease of 30 years without the fairs the extended term being required due to the level of capital investment required at the site.
- 1.3 Failure to reach agreement as detailed above was to result in FDC issuing a notice under s26 of the Landlord and Tenant Act 1954 by which if no agreement were reached would result in a court being asked to determine the lease terms.

2 CURRENT ISSUES

- 2.1 Following a protracted start to discussions requiring the intervention of the Chairman of the Trust substantive progress has now been made and the terms now presented are reflective of this.
- 2.2 As previously reported in many respects the car park has reached the end of its design life and regular repairs are undertaken year on year to patch repair, reline or replace damaged fencing and will require substantial capital investment in the medium term to preserve the facility in a safe condition.

2.3 Legal Issues

- 2.4 The National Trust have presented us with draft Heads of Terms for a new lease for the car park and in summary these are:

Term:	30 years from 25 th March 2024
Break Date:	24 th March 2039 – mutual break on 12 months' notice
Rent:	£5,000 pa
Rent Review:	3 yearly linked to RPI.
Use:	The parking of motor vehicles only. Camping, overnight stays and holding any fairs on the premises are strictly prohibited. Changes to the permitted use during the Term will only be permitted with prior landlord consent. All other changes of permitted use are prohibited
Repair:	The Tenant must keep the Property in good repair and condition.

- 2.5 The issues that arise are the term at only 15 years and the proposed absolute ban on the use of the Car Park for the annual fairs that we currently host.
- 2.6 Officers held initial discussions with NT estate officers and whilst they have agreed to the longer than originally offered term to allow us to programme required improvement works, they remain adamant that the ban on the use for fairs will remain.
- 2.7 Due to the age and construction of the current car park it is to be noted that a refurbishment programme will be required during the term to maintain the integrity of the asset.
- 2.8 The cost of the full refurbishment is estimated by FDC Engineering colleagues to be circa £750k.
- 2.9 Given capital restrictions this work will need to be undertaken on a piecemeal basis over a number of years, as and when required or when capital availability permits.

3 REASONS FOR RECOMMENDATIONS

- 3.1 This paper has been prepared in order to update Cabinet on the negotiations that have taken place subsequent to the previous meeting and instructions to officers thereafter.

4 CONSULTATION

- 4.1 Consultations have taken place with FDC including within the Estate's Team, Engineers and Markets and Events liaison staff. In addition, these discussions have extended to neighbouring occupiers and the NT as landlord.

5 ALTERNATIVE OPTIONS CONSIDERED

- 5.1 As detailed the current lease terminated on the 24th March 2024 and we now occupy by way of a tenancy at will. Initial discussions with the NT were slow due to the NT not actively engaging whilst issues of anti-social behaviour were being addressed. FDC officers believe these issues have been addressed however the NT have failed to amend their position subsequently.
- 5.2 With the apparent status of negotiations three options now present themselves for member consideration:
- 5.3 Accept the proposed NT Terms
- 5.4 Officers are of the opinion that the terms detailed at point 2.4 whilst not providing all that was requested do represent an equitable and workable solution to the lease renewal issues previously faced.
- 5.5 The minimum guaranteed term at 15 years is longer than could be achieved via a court application under the provision of S26 of the landlord and tenant Act 1954 and therefore the previous option of serving such a notice has been discounted.

- 5.6 NT have consistently maintained their stance that they will impose a ban on the use of the site for the twice-yearly fair visits. This position has been maintained throughout the negotiations and they have made clear their view that this is non-negotiable
- 5.7 We believe from discussions with officers that the Showman's Guild are taking independent legal advice on the legality of the use ban and will pursue this matter on their own accord.
- 5.8 Should the Guild be successful in their legal challenge then FDC would be able to approach the Trust for a variation of the lease terms to re-instate the fairs use in the lease at that time.
- 5.9 Terminate Negotiations
- 5.10 The final option to be considered is that FDC decide they no longer wish to retain the car park in the light of the proposed restrictions and significant capital expenditure required. If this was to be the course of action agreed, we would advise the NT of this and vacate the site on a date to be agreed between the parties.
- 5.11 The lease end would be subject to potential dilapidations claim from NT for any failure on the part of FDC in relation to original construction defects and maintenance liabilities under the current lease. Officers however believe this claim will be risky for the NT as they have received rent for 60 years, and therefore to raise concerns now would be problematical for them and thus officers would seek to defend this position robustly.
- 5.12 The NT would be able to assess the current condition and seek to recover costs for failure to perform ongoing maintenance however the definitions within the lease lead us to believe a challenge would be difficult to sustain.

6 ALTERNATIVE FAIR LOCATIONS

- 6.1 Officers from the Estates, Engineering and Markets and Events teams have met on site to start analysis of suitable alternative locations within Wisbech that could be used as alternative locations for the fair.
- 6.2 Sites currently under consideration include:
- Somers Road car park
 - Church Terrace car park
 - Wisbech Park
- 6.3 Whilst the Showman's Guild initially dismissed the suggestion of alternative sites further discussions have resulted in an agreement to assess other

options in full. This may mean a different fair offering, for example fewer or different rides

- 6.4 Engineering colleagues are preparing detailed plans of the sites outlining available areas and clearly delineating protected access rights, emergency access routes and other protected assets. These plans will be shared with the Showman's Guild so they can assess the suitability of each site for their use.
- 6.5 A separate report will be presented to members detailing this piece of work once a suitable solution is arrived at.

7 FINANCIAL IMPLICATIONS

- 7.1 The cost of the lease (£5k p.a.) has been included elsewhere in this report and the costs of full refurbishment (circa £750k) are mentioned in section 2.8. It should further be noted that this amount is not yet included in the approved capital expenditure and a more piecemeal approach could be adopted as described in section 2.9. A more detailed capital projection should be included in the budget papers for 2025-26 for approval at a future Cabinet meeting.

8 EQUALITY IMPLICATIONS

- 8.1 There are no specific equality implications associated with the proposals set out in this report.

9 LEGAL IMPLICATIONS

- 9.1 The legal obligations are as set out in this and the previous Cabinet Report.

10 APPENDICES

- 10.1 Appendix 1 - Confidential Cabinet Paper – 15 July 2024