

Leasehold issues affecting Sherwood Road Industrial Units – public report

Relevant Portfolio Holder	Cllr Denaro
Portfolio Holder Consulted	Yes
Relevant Head of Service	Jayne Pickering
Wards Affected	Aston Fields
Ward Councillor Consulted	Yes

1. SUMMARY OF PROPOSALS

1.1 This report gives members an update into legal issues affecting the industrial units formerly owned by the Council located at 33 -51 Sherwood Road (also known as Plot 31 Sherwood Road). The buildings are made up of 10 industrial starter units forming a small self-contained industrial estate. In 2009 members approved the disposal of the site and the Council's freehold interest was sold in 2011. The site is subject to complex leasing arrangements the details of which are set out in this report.

1.2 In March 2015 the holder of the head lease issued a demand for the council to pay rent owing by the Sublessee. The Council is legally bound to make those payments even though it no longer holds any legal interest in the property. Officers have been working to explore what options are available to the Council to address this situation and to mitigate any future payments that may have to be made.

1.3 This report sets out the information in relation to this matter which is not exempt and can be made available publically. Members will be supplied with a separate exempt report. The exempt report will cover information regarding legal advice received by the Council and commercial information about the other parties involved that cannot be released publically.

2. RECOMMENDATIONS

2.1 That Members note the contents of this report

2.4 That officers bring a further report to Cabinet in the autumn to advise Members of the progress in relation to the legal steps

3. KEY ISSUES

Financial Implications

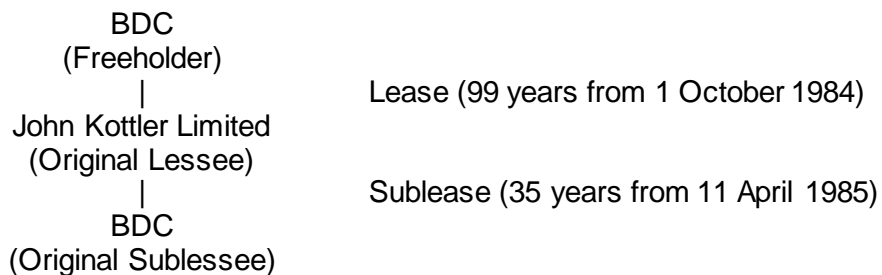
-
- 3.1 In response to the section 17 notices served on the Council since March 2015, the Council has had to make payments to the Current Lessee of £25k. Members are referred to the detailed breakdown set out at paragraph 3.9.
- 3.2 As set out in paragraph 3.10, the Council faces an on-going liability of circa £45k per year arising from the fact that the Sublessee is not paying the rent due to the Current Lessee.

Legal Implications

History of the site

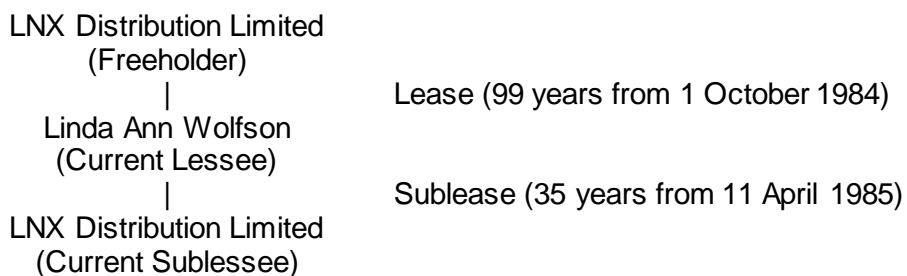
- 3.3 Prior to 1985, BDC was the freehold owner of 33 to 51 Sherwood Road (the Property) which was not subject to any long leases. The Council at the time operated the Property as a small business park letting out the units.
- 3.4 In April 1985, BDC granted a 99 year lease (“the Lease”) of the Property to John Kottler Limited (“the Original Lessee”) and took a 35 year sublease (“the Sublease”) from the Original Lessee.

1985



- 3.5 In 2011, the Original Lessee transferred its interest to Linda Ann Wolfson (“the Current Lessee”), and BDC transferred both its freehold and leasehold interests to LNX Distribution Limited (“the Current Sublessee”).

2011



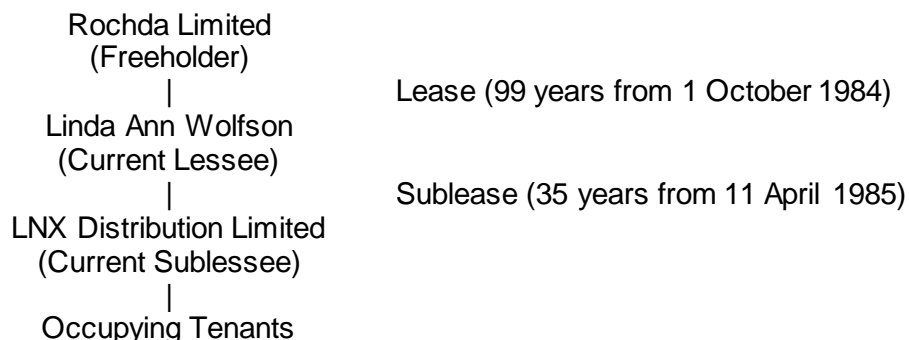
BROMSGROVE DISTRICT COUNCIL

CABINET

01 July 2015

- 3.6 In 2015 LNX Distribution Limited transferred its freehold interest to Rochda Limited.

2015 – current position



- 3.7 The Current Sublessee is not in occupation of the Property. It has itself let the units, most of which appear to be occupied. BDC does not have detail of these leasing arrangements.
- 3.8 The legal position is complicated, but in essence because the Sublease was entered into prior to the 1 January 1996, the original contracting tenant (BDC) remains bound by the covenants in the lease (including the covenant to pay rent) even though it has disposed of its interest in the Property. The law has subsequently been altered but due to the date of the lease the Council is caught by the covenant to pay the rent and there is nothing that BDC could have done on its disposal of the Sublease to escape from this ongoing liability.
- 3.9 The Current Lessee has consequently served two demands for the unpaid rent (and the interest thereon) under section 17 of the Landlord and Tenants (Covenants) Act 1995 on BDC together with a demand for payment of buildings insurance. In order to avoid court proceedings against it and the associated costs thereof the Council has had no option but to pay the demands and the amounts in question are set out in the table below:-

Date of Notice	Period	Rent	Interest	Other	Amount paid
2 nd February 2015	29 Sept 2014 to 24 Dec 2014	£10,647	£370.		Nil – rent paid late by the subtenant
	25 December 2015 to 24 March 2015	£10,647	£116		£10,647
16 th April 2015	20 th Sept to 24 Dec 2014		£438 (re-calculated)		

BROMSGROVE DISTRICT COUNCIL

CABINET

01 July 2015

			and carried forward from above)		
	25 December 2014 to 27 March 2015		£271 (re-calculated and carried over from above)		
	25 th March 2015 to 24 June 2015	£10,647	£67		£11,423
25 th May 2015	2015/2016			Buildings Insurance of £2977	£2977
TOTAL PAID TO DATE					£25,478

Future liabilities and VAT position

3.10 If no action is taken BDC will remain liable to pay any unpaid rent until the expiry of the Sublease in April 2020, together with any further incidental expenses covered by the covenants that are not paid by the subtenant such as the buildings insurance. This represents an on-going liability of circa £45k per annum.

Remainder of this section excluded as exempt information

Service / Operational Implications

3.11 See legal implications

Customer / Equalities and Diversity Implications

3.12 Excluded as exempt information

4. RISK MANAGEMENT

4.1 Excluded as exempt information

5. APPENDICES

Appendix 1 – Plan of site

6. BACKGROUND PAPERS

Bromsgrove District Council Cabinet Report 29 July 2009

7. KEY

N/A

AUTHOR OF REPORT

Name: Sarah Sellers Principal Solicitor

E Mail: s.sellers@bromsgroveandredditch.gov.uk

Tel: 01527 881397