

---

**Leasehold issues affecting Sherwood Road Industrial Units**

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

**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. This report sets out the legal advice received and outlines the alternative solutions available.

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

2.2 That Members give approval to the Council applying for and entering into an overriding lease of Sherwood Road Industrial Estate (33 – 51 Sherwood Road) and if the Sublessee (LNX) continues not to pay the rent due under the sublease to take steps to forfeit or agree a

---

surrender of the sub-lease and take on responsibility for managing the existing occupying tenants.

- 2.3 That authority be delegated to the Head of Legal and Democratic Services to take the steps necessary to implement recommendation 2.2.
- 2.4 That Cabinet recommend to Council that financial provision of £265k be set aside from revenue balances to cover the expenses that the Council will incur due to its obligations under the current lease arrangements (£200k) together with estimates to fund potential dilapidation costs (£60k) and any legal costs arising from the steps set out in 2.2 above (£5k).

**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 £36,151.25. 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, although this has the potential to be mitigated following the grant of an overriding lease by the receipt of rent from the occupiers of the units. The Council also has a potential dilapidations liability of circa £60k (as estimated by Worcestershire County Council) as to which a more accurate estimate can be obtained once the overriding lease has been granted as this will enable the Council to inspect the Property. This liability has the potential to be mitigated by the Council enforcing the repair obligations of the occupiers of the units.
- 3.3 Due to the costs associated with the potential on-going liability and dilapidations it is proposed that sufficient funds are set aside from revenue balances which currently stand at over £4m to provide for any resulting expenditure. This will enable the Council to meet its future liability and cover the estimated cost of ensuring the buildings are of an adequate standard. A more detailed survey will be undertaken once the overriding lease has been granted.

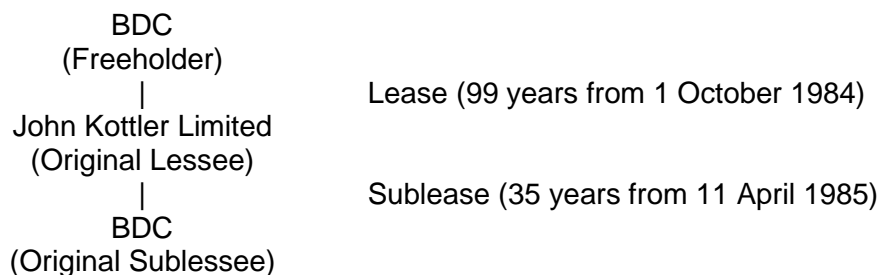
**Legal Implications**

History of the site

3.4 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.

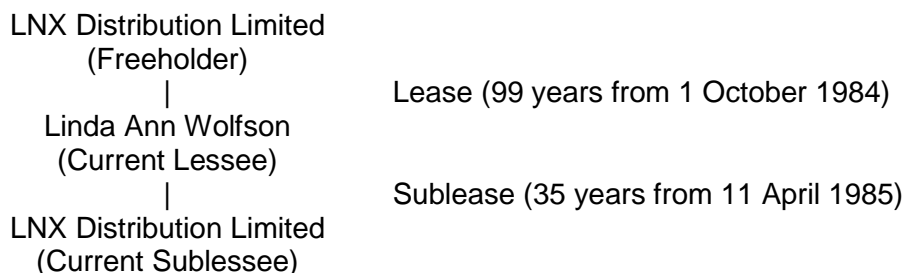
3.5 In April 1985, BDC granted a 99 year lease (“the Lease”) of the Property to John Kottler Limited (“the Original Lessee”) and took a 35 year sublease (“the Sublease”) from the Original Lessee.

1985



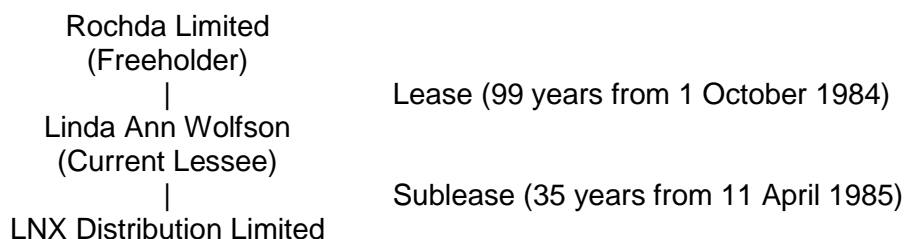
3.6 In 2011, the Original Lessee transferred its interest to Linda Ann Wolfson (“the Current Lessee”), and BDC transferred both its freehold and leasehold interests to LNX Distribution Limited (“the Current Sublessee”).

2011



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

2015 – current position



---

(Current Sublessee)

|  
Occupying Tenants

- 3.8 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, but understands that 9 of the 10 units are occupied and that rent payable by the occupiers is, in total, in the region of £44,000 per annum. The Current Sublessee claims that these tenants (“the Occupying Tenants”) pay their rent late or not at all, hence the Current Sublessee’s inability to pay its rent to the Current Lessee.
- 3.9 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.
- 3.10 It is obviously more advantageous to the Current Lessee to claim unpaid rent from BDC than to pursue the Current Subtenant for the debt or forfeit the Sublease for non-payment of rent. The Current Lessee has consequently served three 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 <sup>nd</sup> 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 <sup>th</sup> April 2015   | 20 <sup>th</sup> Sept to 24 Dec 2014 |         | £438 (re-calculated and carried forward from above) |       |                                       |

**BROMSGROVE DISTRICT COUNCIL**

**CABINET**

**02 September 2015**

---

|                           |   |         |  |                              |                   |
|---------------------------|---|---------|--|------------------------------|-------------------|
|                           | 25 December 2014 to 27 March 2015                             |         | £271 (re-calculated and carried over from above) |                              |                   |
|                           | 25 <sup>th</sup> March 2015 to 24 June 2015                   | £10,647 | £67  |                              | £11,423           |
| 25 <sup>th</sup> May 2015 | 2015/2016   |         |  | Buildings Insurance of £2977 | £2977             |
| 2 July 2015               | 25 <sup>th</sup> June 2015 to 28 <sup>th</sup> September 2015 | £10,647 | £26.25   |                              | £10,673.25        |
| <b>TOTAL PAID TO DATE</b> |   |         |  |                              | <b>£36,151.25</b> |

Future liabilities and VAT position

3.11 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. Assuming that the subtenant continues to default this represents an on-going liability of circa £45k per annum.

Remainder of this section excluded as exempt information

**Service / Operational Implications**

3.31 See legal implications

**Customer / Equalities and Diversity Implications**

3.32 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](mailto:s.sellers@bromsgroveandredditch.gov.uk)

Tel: 01527 881397