

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	FINANCE AND DEMOCRACY COMMITTEE	23 SEPTEMBER 2019	6

BEACH TERRACE CAFÉ, INNER PROMENADE

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

Heads of Terms have been agreed with the existing tenant to accept a surrender of their current Lease (with 14 years remaining) and the grant of a new 15 year lease to Beach Terrace Café Limited. Approval of the new terms is requested to enable Legal Services to prepare and complete a new Lease on similar terms to the existing except for rent and duration.

RECOMMENDATIONS

The Committee is recommended:

1. To accept a surrender of the existing Lease, Supplemental Lease and Deed of Variation and Option.
2. To approve the grant of a new 15 year Lease from 1st June 2019.
3. To approve a rent of £12,000 p. a. for the first 3 years of the new Lease, thereby reviewed/increased in accordance with the Consumer Prices Index for years 4 to 6; and
4. To approve a rent of £20,000 p.a. for years 7 to 9 and thereafter 3 yearly reviews to increase in accordance with the uplift in the Consumer Prices Index.

SUMMARY OF PREVIOUS DECISIONS

This matter has not been considered previously, although the Operational Management Committee approved the grant of a 9 year lease of 33 adjacent car parking spaces to the Beach Terrace Café at its meeting on 17th January 2017.

CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services (Value for Money)	✓
Delivering the services that customers expect of an excellent council (Clean and Green)	✓
Working with all partners (Vibrant Economy)	✓
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	✓
Promoting Fylde as a great destination to visit (A Great Place to Visit)	✓

REPORT

BACKGROUND HISTORY OF BEACH TERRACE CAFE

1. Beach Terrace Café currently have a Ground Lease, Supplemental Lease, and Deed of Variation and Option which enables them to occupy the land until May 2033 (see plan at appendix 1).
2. The original Lease for Beach Terrace Café was granted for a term of 21 years in 1985. In 1999 a Supplemental Lease was granted, extending the term for another 21 years to 2027 and included additional land to be used for outdoor seating and a children's play area. In 2003 an Option was granted, allowing the tenant to seek a further 6 year term thereby extending the Lease to 2033. In 2004 all the Leases were transferred to the current occupier.
3. The Supplemental Lease restricted the use of additional land to outdoor seating and children's play area, although this area has subsequently been used to extend the café building and therefore constitutes a breach of the user covenant. This breach came to light during recent rent review negotiations.
4. Specific advice was sought from Legal Services regarding how to best address the breach of Use and as to whether the tenant could claim that the breach had been waived.
5. Appendix 1 shows the original café demise edged in red, and the current footprint of the café coloured orange. The blue and green hatching show the extent of the Supplemental Lease, which has also been breached as shown by the blue colouring.
6. In order to resolve the breach of user (which partly occurred before the current occupier took over the café) it has been agreed that the simplest way would be to surrender the current Leases and grant a new 15 year Lease on very similar terms. This additional income will be reflected in future updates to the Financial Forecast.
7. The previous rent review in 2015 increased the rent to £6,950 p.a. and the latest review in 2018 has increased the rent to £9,000 p.a. In order to reflect the resolution of the breach of user, the rent for the new Lease will increase to £12,000 p.a. and a further substantial increase will occur in 2025 lifting the rent to £20,000 p.a. It is recommended that this is a good outcome for the Council and represents best value for the Council's land asset.
8. New heads of terms are attached at appendix 2 which have been provisionally agreed with the café tenant.

IMPLICATIONS	
Finance	If the new rental proposals for the Beach Terrace Café are agreed the Council will see significant increases in rental income from the current level £9,000 p.a. to £12,000 p.a. for the initial rental term rising to £20,000 p.a. from years 7 onwards (adjusted in line with the Consumer Price index measure of inflation). This additional income will be reflected in future updates to the Financial Forecast.
Legal	The tenant will contribute £2,000 towards the Council's legal costs.
Community Safety	None
Human Rights and Equalities	None
Sustainability and Environmental Impact	None
Health & Safety and Risk Management	The tenant will no longer be in breach of the user covenant.

LEAD AUTHOR	CONTACT DETAILS	DATE
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
None		

Attached documents

- Appendix 1 Land at Beach Terrace Café, South Promenade, Lytham St Annes – lease plan
- Appendix 2 Beach Terrace Café Heads of Terms agreed by tenant