

Slough Borough Council

REPORT TO:	Cabinet Committee
DATE:	17 November 2022
SUBJECT:	380 Bath Road – Halfords Lease Renewal
PORTFOLIO:	Councillor Rob Anderson Lead Member for Financial Oversight and Council Assets
CHIEF OFFICER:	Pat Hayes, Executive Director Housing and Property Steve Mair, Executive Director Finance and Commercial (s151)
CONTACT OFFICER:	Fin Garvey, Group Manager – Place Delivery Peter Worth, Finance Lead Technical Advisor
WARD(S):	Haymill & Lynch Hill
KEY DECISION:	<u>No</u>
EXEMPT:	Public with exempt appendices under paragraph 3 of Schedule 12A Local Government Act 1972 – Information relating to the financial or business affairs of the Council
DECISION SUBJECT TO CALL IN:	YES
APPENDICES:	Confidential Appendices: 1 – Halfords Lease Renewal 2 – Detailed financial performance of the investment

1. Summary and Recommendations

1.1. To consider and approve the renewal of the lease between Halfords Limited and the Council at 380 Bath Road, Slough.

Recommendations:

1.2. Cabinet is recommended to:

- a) Approve the renewal of the lease between Halfords Limited and the Council at 380 Bath Road, Slough and to delegate authority to the Executive Director of Housing and Property, in consultation with the S151 and subject to legal advice negotiate and enter into a lease with Halfords Limited consistent with the terms detailed in Appendix 1 – Lease Report.

Reason:

- 1.3. The proposal is a statutory lease renewal. The lease is within the security of tenure provisions of the Landlord and Tenant Act 1954 and as such entitled to a renewal on the basis of the terms contained in the previous lease, subject to modernisation.

Commissioner Review

“The recommendations are supported.”

2. Report**Background**

- 2.1. The property was purchased on 29 July 2016 as an investment property under the aegis of the Strategic Acquisition Board. Halfords were an existing tenant with an original lease which commenced in 2001. The property has been identified for disposal as part of the Council’s Asset Disposal Strategy. The lease term ended on 24 June, 2021. In order to progress the disposal, the lease has to be renewed first.
- 2.2. At the end of the lease term Halfords are entitled to a statutory lease renewal pursuant to sections 24-28 of the Landlord and Tenant Act 1954, which means that the ability to negotiate the terms on a commercial basis, in light of the current market, are restricted.
- 2.3. As this lease is within the security of tenure provisions of the Landlord and Tenant Act 1954, the tenant is entitled to a renewal lease based on the terms of the previous lease.
- 2.4. At the start of the period of negotiation there was a moratorium on any property transactions following the s.114 Notice being issued. Consequently the lease renewal could not be progressed or agreed straightaway. As the lease is protected, if the parties cannot agree on the terms of the new lease, either party can apply to court for an order for the grant of a new tenancy. Halfords subsequently made an application to court following unsuccessful requests for the parties to engage with the process to agree the lease.
- 2.5. Lease terms have now been agreed between the parties following lengthy negotiations and are detailed in Confidential Appendix 1.
- 2.6. Vail Williams have provided advice to the Council on the negotiations and confirm that the terms proposed represent ‘best value’ in the current market conditions.

3. Options

- 3.1. Two options have been considered:
 1. Move forward with entering into the lease during the court stay period; or
 2. Go to trial to let the court decide the terms of the new lease.

- 3.2. **Option 1, is recommended** to Cabinet as the lease terms have now been agreed between the parties.
- 3.3. With regard to Option two, if there is discontent with the terms agreed so far, the Council could decide to allow this matter go to trial. The risks associated with this option are;
- there is no guarantee that the court will agree with the Council's views on the lease terms, and they may side with the tenant, so this would result in uncertainty when it comes to agreeing the lease and indeed the final form of the lease;
 - agreement of the lease will be delayed (currently, we have been made aware that court dates for trial are available from the middle of next year, so this would prolong the process); and
 - this option would result in additional costs and officer time.

4. Implications of the Recommendation

Financial implications

- 4.1. The Council has no option but to renew the lease under the Landlord and Tenant Act 1956. Any delay is likely to involve the Council in potentially but unnecessary expensive litigation, with limited prospect of success and which has not been budgeted for.
- 4.2. The property has been identified for disposal under the Council's asset disposal strategy. Avison Young have advised that for the property to be marketable it should be marketed with a sitting tenant.
- 4.3. Details of the financial performance of investment property are reported at Confidential Appendix 2.

5. Legal implications

- 5.1. The Council is authorised to make disposals at the best consideration reasonably obtainable pursuant to s.123 of the Local Government Act 1972. This power is given to Local Authorities to dispose of land in any manner they wish, including the sale of their freehold interests and the granting of leases. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies). A disposal at an undervalue requires the Secretary of State consents to the disposal (section 123, LGA 1972). Paragraph 2 in the report confirms that Vail Williams have provided advice to the Council on the negotiations and confirm that the terms proposed represent 'best value' in the current market conditions.
- 5.2. Halfords' lease is a protected lease. This means that Halfords has a statutory right to a new lease at the end of the contractual term as Part II of the Landlord and Tenant Act 1954 applies to the tenancy and the lease has not been contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954. A tenancy protected by the Landlord and Tenant Act 1954 (LTA 1954) will not terminate automatically at the end of the contractual term. If the tenancy satisfies the qualifying criteria in the LTA 1954 at the contractual expiry date, it will continue under section

24(1) of the LTA 1954, on the same terms as the contractual tenancy, until it is terminated in one of the ways specified by the LTA 1954.

5.3. There are different procedures for renewal of a lease under the Landlord and Tenant Act 1954, depending on whether the landlord or the tenant initiates the renewal:

- The landlord can initiate renewal by serving a [section 25 notice](#) on the tenant,.
- The tenant can initiate renewal by serving a [section 26 request](#) on the landlord.

5.4. If the parties cannot agree on the terms of the new lease, either party can apply to court for an order for the grant of a new tenancy (section 24(1), Landlord and Tenant Act 1954), which is the route that this matter took as Halfords subsequently made a court application.

6. Risk management implications

6.1. The recommendation required from Cabinet, as outlined in this report, is intended to improve the Council's financial position, by reducing the risk of litigation and removing an obstacle to marketing the property as part of the Council's asset disposal strategy.

Risk	Summary	Mitigations
Financial	Delay in renewing the lease runs the risk that the tenant could take the Council to court incurring additional cost.	Cabinet to approve officers to proceed with the lease renewal
Governance	Failure to obtain best consideration from the disposals could expose the Council to risk of legal challenge	The Council has employed external property advisors to manage and competitively market the properties, having access to wider markets than officers locally and has obtained up to date valuations for the sites for comparison purposes.
Legal	Failure to renew the lease runs the risk of litigation	
Governance	To be completed	
Reputational	Adverse publicity from failure to agree a lease with a well-known national high street supplier	

7. Environmental implications

7.1. No environmental implications have been identified.

8. Equality implications

8.1. Decision makers should have due regard to the public sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. In order to discharge its public sector equality duty, in considering the recommendations of this report the Cabinet must have due regard to the possible effects of them on any groups sharing a protected characteristic. This is an ongoing obligation. Consideration of the duties should precede the decision. It is important that Cabinet has regard to the statutory grounds in the light of all available material such as consultation responses. The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows.

6.5 The Public Sector Equality Duty also imposes a 'Duty' on public bodies to consciously and rigorously think about the three aims of the Public Sector Equality Duty (PSED) and in exercising their functions a public authority must pay due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.6 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

6.7 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

6.8 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- Tackle prejudice, and
- Promote understanding.

6.9 Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would

otherwise be prohibited by or under this Act. The relevant protected characteristics for the purposes of the Equality Act are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race,
- Religion or belief
- Sex
- Sexual orientation
- Marriage and Civil partnership

6.10 Equality Impact Assessments taking into account the results of the consultation must be carried out to demonstrate that the Council is fully aware of the impact that the changes identified in this report may have on stakeholders.

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9. Procurement implications [Discretionary]

3.6.1 None

10. Workforce implications

10.1. No workforce implications have been identified as a direct result of this report.
Property implications [Discretionary]

11. Background Papers

None