

# APPENDIX H

## Unit 2 Farmfields, Northampton

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### 5. Report Background

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- 5.1 Units 34, 35, 36, and 37 Farmfield Court were demolished as part of a residential redevelopment carried out by Northampton Partnership Homes (NPH) and the commercial tenants were temporarily re-located to allow the development to proceed.
- 5.2 As part of the agreement which facilitated their relocation, it was agreed that the tenants would be allowed to re-occupy the new units once they had been completed and fitted out to their specification. The occupation of the new units would be via a new lease on terms to be agreed between the parties.
- 5.3 The new development of 17 flats, two new purpose-built shops together with a community room has now been completed and the commercial tenants that were originally displaced have now moved back into the newly completed units.
- 5.4 Following negotiations with the tenant, the following terms were agreed for Unit 2.
- 15-year lease
  - Property to be used as a takeaway.
  - Lease is to be on a full repairing basis. Insurance costs to be reimbursed to WNC.
  - Five yearly rent reviews to open market rent or passing rent whichever is the higher.
  - Stepped rental: -
    - Year 1 £8,000 pa
    - Year 2 £9,000 pa
    - Year 3 £9,000 pa
    - Year 4 £10,000pa
    - Year 5 £10,000pa.
- 5.5 The letting was approved by Northampton Borough Council (NBC) under delegated authority on 9<sup>th</sup> March 2021.

## **6. Issues and Choices**

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- 6.1 Under the agreement which afforded NPH vacant possession of the site to complete the development, the former commercial tenants were permitted to reoccupy the newly constructed units on completion. While it was anticipated that the legal agreements would be in place before Vesting Day, or shortly thereafter, it was not possible to implement these and as such the tenant is currently occupying the property under a tenancy at will. It is important therefore that the occupation of the tenant is regularised as soon as practicably possible.
- 6.2 As highlighted at 5.5 above, the proposed lease was agreed by NBC via a delegated authority in March 2021. Unfortunately, it was not possible to complete the lease prior to Vesting Day. As the proposed lease is for 15 years without a landlord's or mutual option to break, it does not fall within the delegated powers conveyed to officers under the Constitution and authority from Cabinet to proceed is required.
- 6.3 WNC could take the decision not to complete the lease and seek vacant possession of the property. This is not recommended, on the basis that there is likely to be reputational damage to WNC and potentially legal implications of renegeing on a previous agreement with the tenant. Given the nature of the fit out works that were completed on the property, it is also anticipated that should the property become vacant, there could be an extended period of rental voids during which time WNC would be responsible for all vacant costs.

## **7. Implications (including financial implications)**

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### **7.1 Resources and Financial**

- 7.1.1 The subject property forms part of WNC's investment estate as the income received is used to support wider service delivery. The proposed agreement will enable WNC to generate income from the property and regularise the occupation of the property by the tenant.
- 7.1.2 As part of the transaction, it has been agreed that each part to bear their own legal costs. WNC legal costs are mitigated through using its in-house legal team.

### **7.2 Legal**

- 7.2.1 At present, the Tenant occupies the property under a Tenancy at Will. By making this decision, WNC will be able to regularise the occupation. If the matters are allowed to continue, it is likely that the Tenant may be able claim additional rights to a secure commercial tenancy under the Landlord and Tenant Act 1954.

### **7.3 Risk**

- 7.3.1 If the recommendation for the proposed letting is not approved there is a risk of reputational damage to WNC as it would have renegeed on an agreement made with the tenant which facilitated the wider redevelopment scheme. While obtaining vacant possession of the property is a possibility, it is not deemed to be appropriate at this stage as WNC would be likely to face a prolonged period of rental void as well as incur vacancy costs.

7.3.2 As highlighted in this report, if the decision is not progressed, WNC would either have to seek possession of the unit or continue with the current arrangement until such as time that an alternative solution can be agreed. It is therefore recommended that the occupation be regularised as soon as practicably possible.

#### 7.4 **Consultation**

7.4.1 No consultation has been considered necessary.

#### 7.5 **Consideration by Overview and Scrutiny**

7.5.1 None.

#### 7.6 **Climate Impact**

7.6.1 No material impact on climate is anticipated as a result of this decision.

#### 7.7 **Community Impact**

7.7.1 Failure to secure the letting will impact on the retail facilities that are provided to the community by the tenant.

### 8. **Background Papers**

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8.1.1 None.