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| <b>DECISION MAKER:</b>  | <b>Cabinet</b>  |
| <b>MEETING DATE:</b>    | <b>22 January 2015</b>  |
| <b>TITLE OF REPORT:</b> | <b>Hereford United Football Club (1939) Ltd<br/>(approval to seek new tenant at Edgar Street<br/>athletic ground, Hereford)</b> |
| <b>REPORT BY:</b>       | <b>Head of Corporate Asset Management</b>   |

## **Classification**

Open.

## **Key Decision**

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the county.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 .

## **Wards Affected**

Hereford Central ward.

## **Purpose**

To consider future lease arrangements in relation to the former Hereford United Football Club ground and of land at ground ends.

## **Recommendations**

**THAT:**

- (a) the cabinet member contracts and assets be authorised (following consultation with the leader of the council) to seek a new football tenant for the pitch (and such ancillary sports related facilities as he considers appropriate) at the Edgar Street athletics ground through an open public advertisement process and consultation with parties likely to be affected by the decision including as a minimum the Hereford United**

**Supporters' Trust, the Football Association and Sport England);**

**(b) the director for economy, communities and corporate be authorised (following consultation with the assistant director, governance) to grant an initial short term lease to the new football tenant on such terms as are appropriate to protect the council and the use of the ground; and**

**(c) the director for economy, communities and corporate submit a further report to Cabinet to recommend longer term arrangements.**

## **Alternative Options**

- 1 Seek to dispose of the council's freehold interest in the asset. This would not be in the council's best interest in the short term as the asset has significant long term value which may be compromised by a freehold disposal at this time and in its present form.
- 2 Seek to relocate the sports facility having due regard for viable alternatives. This may be a long term option but would need significant consultation and evaluation before any decision is contemplated.

## **Reasons for Recommendations**

- 3 The premises are now vacant and constitute a liability to the council.
- 4 The council have identified no operational use for the premises.

## **Key Considerations**

- 5 Hereford United Football Club (1939) Limited was subject to a successful winding up order on 19th December 2014. This has not been challenged by the club and the time limits for challenge have now expired.
- 6 The leases of the ground and ends were forfeited by peaceable re-entry following the making of the winding up order. That forfeiture has not been challenged by way of a court application for relief against forfeiture by the official receiver and as such the leasehold interest no longer exists.
- 7 The development agreement has been terminated as a result of the successful winding up order.
- 8 The issue of the vacant ground has generated significant public interest which will lead to pressure upon the council to secure a new tenant at the earliest reasonable opportunity. There is likely to be intense public scrutiny of any decision and therefore a transparent and open process of attracting a new tenant will be essential. It is proposed that a two stage process is adopted, with the grant of an initial short term lease to enable a potential tenant to comply with football league requirements. The potential for a further lease will be considered once the long term future of the site has been determined. A further report will be made to cabinet setting out the options for the longer term.
- 9 There may be interest from potential non-sporting users following completion of the

Old Market and Urban Village developments. Consideration should be given to the longer term vision for the site within the context of the wider development proposals for the Edgar Street Grid area.

- 10 Legal advice has been sought to determine the process and timing of any attempts to secure a new tenant (see Legal Implications and Risk Management sections of the report below).
- 11 Consideration should be given to those parts of the total demise that might be made available to a new tenant e.g. excluding the former leases 2 & 3 (Meadow and Blackfriars end development leases).
- 12 It is not the duty of Herefordshire Council to secure and retain league football at Edgar Street Athletic Ground; however, due to the level of public interest shown, Herefordshire Council wish to work with interested parties to enable this to be facilitated, should appropriate interest be forthcoming.

## **Community Impact**

- 13 There is significant community interest in the future of the ground.
- 14 There is a strong body of support for the continued use of the ground for sporting purposes.
- 15 There appears to be a number of interested parties who might seek a tenancy agreement for the ground.
- 16 By seeking a new short term tenant Herefordshire council is seeking to demonstrate best use of resources and value for money for the taxpayer in the short to medium term whilst not compromising the ability to obtain better value for money in the longer term.

## **Equality and Human Rights**

- 17 No equality or human rights implications identified.

## **Financial Implications**

- 18 The council have a budget for rental income of £10k pa and while the ground is vacant will need to pay the vacant property NNDR liability of £20k. There will also costs relate to securing the ground while there is no tenant, estimated to be £20k pa plus essential repairs. Total unbudgeted revenue costs could therefore be in the region of £100k while the property remains vacant.

## **Legal Implications**

- 19 On 22 December 2014 following the making of a winding up order against HUFC (1939) Ltd, the leases to HUFC were forfeited by peaceable re-entry.
- 20 It is possible for the official receiver, who must now investigate the demise of the club and distribute their assets to seek to pay off creditors (of whom the council is one), to apply to court for relief against forfeiture. He could do this and if successful apply to the council to assign the leases. However as the making of a winding up order and appointment of the liquidator is a valid ground for forfeiture such application would be

unlikely to succeed.

- 21 It is likely that the official receiver will arrange a meeting of creditors to appoint a liquidator other than herself as nominations have been made by a number of creditors for more than one insolvency practitioner. The meeting will need to take place no later than 12 weeks after the date of the winding-up order and once this takes place, that liquidator will then take over control of the affairs of the company. The official receiver has been notified of the debts still owed to the council which chiefly concern rates and re-entry costs but as the council are an unsecured creditor the amount the council will receive is unlikely to be enough to pay that sum.
- 22 It is recommended that the new short term and any longer term lease contain terms protecting the council and the site for its intended use. The initial lease will be for a period of not more than three years and excluded from the security of tenure provisions of the Landlord & Tenant Act 1954 thus removing any statutory right of renewal or compensation for non renewal from the tenant. The lease should also contain:
- A full repairing and insuring liability on the tenant;
  - A probation on alienation i.e. no assignment/subletting or sharing of occupation or charging permitted thus ensuring the lease remains with the entity to whom it is granted only;
  - A landlord's break clause operable by events including change of ownership of the entity who are the tenant;
  - Clear forfeiture provisions.
- 23 Consideration will need to be given to the ends of the site over which access must be granted. It is recommended that a right of access, for the same period as the initial lease, is granted, subject to contribution to maintenance of such access way, rather than leases.

### **Risk Management**

- 24 Any pre-emptive action could trigger a challenge to forfeiture on behalf of the liquidator and unfortunately frustrate the process of securing a new tenant.
- 25 The longer the building remains vacant, the greater the costs of reinstatement and repair and the potential for vandalism and other incremental cost.

### **Consultees**

- 26 The local member is being consulted and their views will be reported to Cabinet.
- 27 Group leaders have been kept fully informed throughout the process and are supportive of the recommended action.
- 28 General Overview & Scrutiny Committee – plan to review the management of the Edgar Street leases on 10 February, and their views will be taken into consideration in the development of future options for the site.

### **Appendices**

None.

### **Background Papers**

None identified.