

Record of officer decision

Decision title:	Voluntary surrender of mobile phone mast lease on Franklin House
Date of decision:	5th July 2019
Decision maker:	Acting Assistant Director for Technical Services, Economy & Place
Authority for delegated decision:	Herefordshire Council's constitution - Scheme of Delegation Part 3 Functions Scheme, Section 7 Officer Functions <ol style="list-style-type: none"> 1. 3.7.6 Delegation to Chief Executive 2. 3.7.12 Sub delegation from Chief Exec to officers
Ward:	Widemarsh
Consultation:	None
Decision made:	Agree to voluntary surrender of mobile phone mast lease, any associated legal agreements and final rent payments. Not to implement the final rent review (due 2016).
Reasons for decision:	<p>Records indicate that Herefordshire Council served a notice to terminate the original agreement due to plans to redevelop the site. Negotiations were then entered into with the mobile phone mast operator (Hutchinson 3G) to enable the mobile mast to remain but also to ensure vacant possession could be guaranteed for redevelopment. No agreement could be reached but the mast remained in situ for a number of years, the status of this arrangement is not clear, until the mobile phone operator voluntarily acquired a replacement site. As a telecoms operator their equipment is protected under statute and the final termination properly documented.</p> <p>The mast was decommissioned about 2014 but for technical reasons they were unable to remove their equipment until 2018 and have continued to be liable for rent for their redundant equipment. They have yielded up vacant possession (apart from those items that we have agreed to take to).</p> <p>We have agreed the final rent demand of (£19,940.07) plus VAT. We will also invoice for additional VAT that was not collected on some of the historic rent demands. In 2015 the parties agreed to the historic rent reviews (that have been back-dated resulting in additional rental income) but not to implement the final rent review in 2016; this was partly as they have incurred significant expense to enable us to have vacant possession at our request and because it is not clear whether it was enforceable (as they may be occupying under a tenancy at will).</p>
Highlight any associated risks/finance/legal/equality considerations:	<p>Part of the rent has already been invoiced. The final payment will be greater than that which has already been invoiced and shown on our financial records as debt.</p> <p>Legal have been instructed to complete the surrender documentation of a lease that we inherited from the previous owner. There were other agreements to lease that were inherited</p>

	<p>when the property was purchased that we understand are no longer in force; there is some ambiguity as to whether the original lease was terminated and replaced by a tenancy at will. Legal will formally terminate all and any of the agreements between the parties that may affect the property.</p> <p>No equality issues have been identified.</p>
Details of any alternative options considered and rejected:	<p>The tenant has removed their mast at the request of Herefordshire Council, therefore no alternative options to surrendering the mast have been considered.</p> <p>Attempting to implement the final rent review was considered unreasonable bearing in mind the significant costs incurred by the tenant to vacate the site at the Council's request; there are also questions as to its enforceability if the other party could source documentation to demonstrate that their lease had been terminated.</p>
Details of any declarations of interest made:	None

Signed Chris Jenner

Date: 5th July 2019

Acting Assistant Director for Technical Service, Economy & Place