

HEREFORD UNITED FOOTBALL GROUND LEASES**Report By: Director of Regeneration****Wards Affected**

Central Ward

Purpose

1. To provide information to the Committee on the options for development of the football ground within the context of the wider ESG development.

Financial Implications

2. Development costs for the football ground are not included in the funding proposals for ESG and are therefore unbudgeted.
3. Compensation payments under the lease are unquantified, but will be substantial if pursued.

Background

4. This report gives a general analysis of Landlord and Tenant issues relating to premises generally and in particular the leasehold interest affecting the Hereford United Football Ground, and a commentary on the options open to the Council.
5. The football ground was specifically included in the Masterplan proposals for ESG.

Lease Details

6. There are two leases relating to the Hereford United Football Ground, both dated 12th August, 1982. One is for the ground itself and the terraces on the west side and the other is for the stand and parking area on the east side.
7. The Lease for the ground is for a term of 75 years from 12th August, 1982 and the Lease for the stand is for 33 years from 12th August, 1982. The tenant under both leases is Formsole Limited and the Football Club hold sub-leases.
8. Both Leases contain a forfeiture clause in the event of non-payment of rent, breach of covenant or liquidation. All the covenants in the Leases have not been outlined for the purpose of this report.
9. Both Leases are business leases protected under the Landlord and Tenant Act 1954 (as amended) which provides that such a tenancy shall not come to an end unless terminated in accordance with the provisions of the Act. Subject to the service of notices, as required by the Act, either the Tenant or the Landlord may apply to the Court for an order for the grant of a new tenancy. In other words, the Leases do not terminate automatically on the Lease expiry date, but will continue until terminated in accordance with the Act, if the tenant remains in occupation.

10. In this case, the premises are sub-let to the Football Club and it is in occupation. Therefore, it is the Club that has the protection of the Act, not the Tenant, Formsole Limited.
11. Either the Landlord or the Tenant can serve notice to terminate the tenancy, including the right to apply for a new tenancy.
12. The Landlord serves a termination notice under S.25 of the Act or the Tenant serves a request for a new tenancy pursuant to S.26. The Landlord may agree to the grant of a new tenancy or seek to oppose the grant on one of a number of grounds set out in S.30.
13. There are seven grounds:
 - (a) failure to repair in accordance with a covenant to do so in the Lease;
 - (b) persistent delay in paying rent;
 - (c) other substantial breach of covenant;
 - (d) Landlord has offered and is willing to provide or secure the provision of alternative accommodation for the Tenant – on reasonable terms having regard to the current tenancy and to all other relevant circumstances and that the accommodation and the time it is available are suitable to the Tenant's requirements;
 - (e) This relates to sub-letting on non-economic grounds and is not relevant in the case of the football ground;
 - (f) The Landlord intends to demolish or re-construct the premises or a substantial part, which could not be done without obtaining possession of the premises;
 - (g) Landlord intends to occupy the premises for the purposes or partly for the purposes of a business to be carried on by him.
14. There are various rules and procedures regarding service of the notices which are of a technical legal nature.
15. Apart from the above, it is always open to the parties to negotiate an early surrender of the Lease which would involve, in this particular case, relocation and/or compensation.

Compensation

16. If the Landlord obtains possession in accordance with grounds 12(e), (f) or (g) above, the Tenant is entitled to compensation. These are referred to as the "non tenant fault" grounds.

Development Options

17. There are a number of options for development:
 - (a) The head tenant carries out development using their own resources, subject to renegotiation of the lease to permit a commercial development of part of the site.
 - (b) The head tenant and/or the football club, as sub-tenant, develops the ground for sports and football purposes only.
 - (c) The football club is relocated and the site developed by the head tenant.

- (d) The football club is relocated, the lease is terminated and the head tenant compensated for loss of their lease interest. The Council/ESG redevelop the site.
 - (e) The lease is terminated. The club is not relocated and ceases to exist. The tenant is compensated for the loss of their lease interest. The Council/ESG redevelop the site.
18. The existing lease prohibits the development of the football ground, except as an athletic sports and football ground and ancillary uses, and subject to Council approval.
 19. The Council and ESG held a number of meetings with the head tenants and the football club to discuss proposals for a commercial redevelopment of part of the ground to fund the refurbishment of the football ground and stands. Discussions had reached the stage of preparing Heads of Terms for a re-structuring of the lease to permit such a development. However, it has become clear that neither the head tenant nor the football club is prepared to proceed with such a development in the current financial circumstances.
 20. Options leading to the termination of the lease and relocation or otherwise of the football club would result in substantial costs to the Council, both in compensation and/or relocation costs and subsequent site development costs.
 21. At present, there are no financially feasible or appropriate options for development of the football ground. The Council would only take forward any development proposals in consultation with the Football Club and Formsole Limited. It is important to note that at this point in time no changes are proposed to the current position and the Football Club is secure in its current arrangement

RECOMMENDATION

THAT the report be noted.

CONSULTATION

- Legal Services
- Asset Management and Property Services

BACKGROUND PAPERS

- None Identified