

Is the final decision on the recommendations in this report to be made at this meeting?

Yes**Royal Victoria Place Tunbridge Wells Update**

Final Decision-Maker	Cabinet
Portfolio Holder(s)	Councillor David Scott – Portfolio Holder for Property, Major Projects and Strategic Engagement Councillor Tom Dawlings – Portfolio Holder for Finance and Governance
Lead Director	Lee Colyer Director of Finance, Policy & Development (S151 Officer)
Head of Service	David Candlin – Head of Economic Development & Property
Lead Officer/Author	Diane Brady – Property , Estates and Development Lead
Classification	Part Exempt Appendices exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended): Information relating to the financial or business affairs of any particular person including the authority holding that information.
Wards affected	Park

This report makes the following recommendations to the final decision-maker:

1. To note the contractual obligation on the Council as the freeholder of the long leasehold interest between the Council and British Land to consent to the proposed mall refresh refurbishment works and to contribute to the full cost of such works as provided for under the terms of the lease and
2. To delegate to the Head of Economic Development and Property in consultation with the Monitoring Officer, the Director of Finance, Policy and Development, the Portfolio Holder for Finance and Governance and the Portfolio Holder for Property, Major Projects and Strategic Engagement the authority to –
 - (i) complete all necessary negotiations, legal documentation and legal formalities and to appoint external solicitors to deal with such matters as considered appropriate and
 - (ii) make all proven and necessary payments to ensure compliance with the lease obligations in relation to the identified Type 1 Qualifying Refurbishment works.

This report relates to the following Five Year Plan Key Objectives:

- A Prosperous Borough – by making the best use of land and property assets for the benefit of residents and in encouraging future growth and investment by marketing opportunities that the Borough owns. The Five Year Plan (2017-22) sets out an overarching vision as follows:” To encourage investment and sustainable growth and to enhance quality of life for all” It also sets out a commitment that “at times we will need to invest to create the best opportunities foradditional income”

Timetable	
<i>Meeting</i>	<i>Date</i>
Management Board	11/09/2019
Discussion with Portfolio Holder	2 September 2019
Finance & Governance Cabinet Advisory Board	1 October 2019
Cabinet	24 October 2019

Tunbridge Wells Committee Report, version: April 2017

Royal Victoria Place Tunbridge Wells Update

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report seeks to notify Cabinet of the intention of the long leaseholder, BL Tunbridge Wells Ltd (British Land) to undertake refurbishment works to the Royal Victoria Place Shopping Centre and to note and confirm the Council's obligation to contribute towards the cost of such works as provided for under the terms of the long leasehold interest.
- 1.2 To note the summary specification of the proposed works to be undertaken and the proposed project programme for undertaking the works.
- 1.3 To note the proposed estimated total cost of the works and the proportion of the cost of those works required to be contributed by the Council under the terms of the lease.
- 1.4 To note that the figures in this report are estimates and to further note that the Council is obliged under the covenants of the lease to pay the landlord's proportion of the actual costs of the Qualifying Refurbishment properly incurred.
- 1.5 To delegate to the Head of Economic Development and Property in consultation with the Monitoring Officer, the Director of Finance, Policy and Development, the Portfolio Holder for Finance and Governance and the Portfolio Holder for Property, Major Projects and Strategic Engagement the authority to complete all necessary negotiations, legal processes and legal documentation to complete this transaction and make the necessary payments to comply with the head leasehold terms.

2. INTRODUCTION AND BACKGROUND

- 2.1 RVP is a purpose-built covered shopping centre located within Royal Tunbridge Wells town centre. It provides around 320,000 ft² of floor space across three levels and 99 units.
- 2.2 The centre was constructed by MEPC in the 1990s and is the principal shopping centre in Royal Tunbridge Wells. Tunbridge Wells Borough Council (TWBC) is the freeholder of the centre. Since 21 May 2018 the whole of the freehold of RVP is in the ownership of the Council (previous to that date the Council owned the majority of the freehold title). Car parking is provided within the RVP multi-storey car parks adjoining the centre along with Meadow Road car park which together offer around 1,680 car parking spaces. Both car parks are within the Council's freehold ownership.
- 2.3 The Council granted a long leasehold interest in the scheme on a lease for 200 years from 25th March 1992, expiring 24th March 2192 (approximately 173 years unexpired). This lease was assigned from BT Pension Fund to British Land on 21 May 2018 and was also subject to some clarification of lease terms

and rectification of de minimus areas of land which were regularised in the long leasehold interest by agreement between British Land and the Council at the same time as the assignment.

- 2.4 The current ground rent received by the Council as Freeholder is the greater of £837,000 per annum and 10 per cent of the net income plus 98.5% of the Department Store Rent received. In addition, as a result of the long leasehold variations and regularisation of the de minimus land and clarification of lease terms, the long leaseholder pays a further rental of £45K per annum.
- 2.5 British Land has indicated to the Council their intention to refurbish and redevelop the Royal Victoria Place. There is currently a planning permission for the redevelopment of the centre which was submitted by the previous long leasehold owner and which was approved in January 2017 as a permission for 5 years, therefore expiring in January 2022. British Land has indicated to the Council that they are considering their own redevelopment scheme for the centre, but in the meantime have submitted an application to the Council as freeholder for permission to undertake and for payment of a contribution of the cost of refurbishment works. British Land, as the long leaseholder, is entitled to seek such permission and contribution payment under the terms of the lease.
- 2.6 The proposed refurbishment works do not require planning permission. They are principally a refresh and reconfiguration of the malls and the proposals submitted by British Land are attached at Appendix A. British Land recognise the need to undertake these refurbishment works to modernise and improve the centre to change the retail market perception and customer perception and enhance the environment and customer experience. Investment by both British Land and the Council in the refurbishment of RVP will help to protect the value of the Council's property asset.
- 2.7 The long leasehold interest between the Council as freeholder and British Land as long leaseholder provides that the long leaseholder may undertake works which, if they constitute a Qualifying Refurbishment as defined under the terms of the lease, the freeholder is obliged to contribute towards.
- 2.8 A Qualifying Refurbishment comprises works of demolition, reconstruction, construction, alteration and or addition to the demised premises and redevelopment of the whole or part. (Each of these terms has defined meanings in the property context, often defined through case law).
- 2.9 Where the works proposed constitute a Qualifying Refurbishment, it must be ascertained whether it is a Type 1, Type 2 or Type 3 Qualifying Refurbishment. The Type is defined by the relationship of the Development Cost to the Gross receipts during the accounting year expiring immediately before the date of the proposal. The proposed works by British Land constitute a Type 1 Qualifying Refurbishment.
- 2.10 In the case of a Type 1 Qualifying refurbishment the landlord is to have not less than three months from receipt to consider the detailed plans and specification and is to consider the proposal with all due expedition and keep the tenant fully informed of progress and matters likely to result in the landlord deciding not to

approve the proposal so that the tenant is given reasonable opportunity to make representations to the landlord.

- 2.11 The Council has received all of the relevant information and has confirmed that the Qualifying Refurbishment proposal timeline defined in the long leasehold interest was triggered on 14 June 2019. British Land has provided a project programme which indicates their intention to start on site in October 2019 and complete works in June 2020. It is their intention to undertake works outside normal operating hours. The Project programme is attached at Exempt Appendix A.
- 2.12 The Council has challenged that some of the works specified by British Land do not fall within the Qualifying Refurbishment definition and as a consequence British Land have accepted this challenge and have removed these works from the Qualifying Refurbishment specification and costs. This has therefore reduced the estimated total cost of the Qualifying Refurbishment and consequently the estimate contribution required to be made by the Council as the Freeholder.
- 2.13 The Long Leasehold states certain timescales and procedures that must be adhered to by both parties in the event of the tenant undertaking a Type 1 Qualifying Refurbishment, including the information that must be provided by the long leaseholder to trigger the Type 1 Qualifying Refurbishment, and the timescales by which certain information must be provided and certain action undertaken. An estimate of the total cost of the works in connection with the Qualifying Refurbishment together with an itemised estimate of all other development costs anticipated to be incurred, including professional fees, interest, the amount by which the Gross receipts will be reduced during the course of the refurbishment, disturbance and termination payments to tenants, marketing and promotion costs, irrecoverable VAT and the tenant's required rate of return of 12.5% must all be included in the proposal put to the landlord by the tenant, and in the case of the British Land Proposal, the principal figures are attached at Exempt Appendix B.
- 2.14 Under the terms of the long leasehold interest, the Council as the landlord is required to contribute 10% of the cost of the Qualifying Refurbishment works and associated costs. On the current British Land Qualifying Refurbishment proposal estimated cost the Council is therefore required to contribute the estimated sum specified in Exempt Appendix B. Although the figures provided in this report and by British Land are estimates, payment of 10% of the actual cost incurred is a contractual obligation on the freeholder under the terms of the lease which must be complied with. Failure by the Council to comply would result in a breach of its covenant under the lease which British Land would be entitled to enforce by means of specific performance requiring the Council to comply with its obligation to pay the contribution in accordance with the terms of the lease or a claim for breach of contract and damages.
- 2.15 Following approval of a Qualifying Refurbishment Proposal, the lease provides that the Council and British Land are to enter into a binding legal agreement to enable the Qualifying Refurbishment to proceed and to give effect to the Council's obligation to contribute 10% of the actual cost of the Qualifying

Refurbishment. The lease specifies the type of agreement to be entered into and what this must contain. This includes relevant plans and specifications, timetable for carrying out the works, provision of appropriate warranties, landlord approval of contractor, form of contract and of the professional team, financial terms.

- 2.16 The Council will ensure that all of these provisions are met in proceeding with and completing this matter.
- 2.17 The Council with its external legal advisers has given high level consideration as to whether the agreement referred to in paragraph 2.15 of this report that it will be entering into with British Land could constitute a public works contract for the purposes of the Public Contract Regulations 2015 (PCR), such that entering into it without having undertaken a PCR-compliant procurement exercise would breach the PCR and place the Council at risk of challenge. The risk is considered to be low on the basis that the value of the Council's contribution towards the works that it will be agreeing to pay to British Land is below the current threshold in the PCR, that the Council is not receiving works from British Land that are to its direct or immediate economic benefit and that the Council has not taken measures to define the type of work nor has it had a decisive influence over their design; the works were initiated and designed by British Land. If in the alternative the PCR were found to apply, it appears that the "exclusive rights" exemption should be able to be relied upon given British Land's position as tenant under the lease. The Council with its external legal advisers has also given high level consideration to whether there are any state aid implications of the Council entering into the proposed agreement with British Land. Again the risk is considered to be low, on the basis the Council has received independent commercial advice on British Land's proposed costs for the works which has concluded that these are at an acceptable level in the market which a private sector entity would be prepared to accept.
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3. AVAILABLE OPTIONS

- 3.1 Do nothing. This is not an option since the Council as freeholder and landlord of the long leasehold interest, is obliged to comply with the covenants in the lease and to make the defined contribution and enter into the required agreement as defined in the long leasehold interest
- 3.2 Comply with the terms of the long leasehold interest and make the required actual contribution (as indicated as an estimate only in the attached exempt appendices) and as required under the terms of the lease, to make such payments as are necessary and enter into the agreement to comply with the terms of the lease.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 The preferred option is 3.2 above to make the required financial contributions and enter into the required agreement to ensure that the Council complies with the lease term in the long leasehold interest and is not placed in breach of covenant by failure to fulfil its obligations.

RECOMMENDATION FROM CABINET ADVISORY BOARD

- 4.2 The Finance and Governance Cabinet Advisory Board were consulted on this decision on 1 October 2019 and agreed the following:

The Recommendations set out in the report be supported.

5. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<p>Legal including Human Rights Act</p>	<p>Legal advice is sought for all transactions and all necessary legal documentation will be approved by Legal Services before completion.</p> <p>Under Section 111 of the Local Government Act 1972 the Council has the power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.</p> <p>The Council has a general power of competence pursuant to Section 1 of the Localism Act 2011 which enables it to do anything that individuals generally may do.</p> <p>Acting on the recommendations stated in this Report is within the Council's statutory powers.</p> <p>There are no consequences arising from the recommendation that adversely affect or interfere with individuals' rights and freedoms as set out in the Human Rights Act 1998.</p>	<p>Keith Trowell, Team Leader (Corporate Governance) & Deputy Monitoring Officer and Claudette Valmond – Principal Solicitor 03/09/2019</p>
<p>Finance and other resources</p>	<p>Assistance from the Finance team is being provided as and when necessary and all required notification is being provided to amend the Council's financial records.</p> <p>The Council has sufficient funds from which to fund the refurbishment.</p>	<p>Lee Colyer, Director of Finance, Policy and Development (section 151 Officer) – 03/09/2019</p>
<p>Staffing establishment</p>	<p>Work will be prioritised and undertaken by permanent staff, and specialist consultants will be appointed where identified, subject to approval, for implementation of this decision.</p>	<p>Nicky Carter, Head of HR, Customer Service and Culture - 03/09/2019</p>

Risk management and health & safety	Risk is being managed by complying with the Constitution requirement to obtain legal advice and cost analysis where necessary.	Report Author 03/09/2019
Environment and sustainability	<p>The Council has declared a climate emergency and as such has an ambition to make the Council's operations carbon neutral by 2030.</p> <p>Therefore, any activities that fall into this remit will need to be assessed to ensure it meets the requirement to support the Councils ambition in achieving carbon neutral by 2030.</p> <p>In terms of this proposal there appear to be no direct implications that arise from this particular decision. It is also understood that the tenant has full responsibility for the undertaking and delivering these works.</p>	Karin Gray Sustainability Manager 03/09/19
Community safety	There are no concerns arising from this report	Report Author 03/09/2019
Health and wellbeing	No specific issues. The long leaseholder will be responsible for complying with all relevant Health and Safety Issues in undertaking the refurbishment works.	Mike Catling, Corporate Health and Safety Advisor - 03/09/2019
Equalities	The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.	Ingrid Weatherup Corporate Governance Officer 03/09/19

6. REPORT APPENDICES

The following documents form part of the report:

- Appendix A: Proposed Qualifying Refurbishment Works by British Land
- Exempt Appendix A: Project Programme
- Exempt Appendix B: Qualifying Refurbishment Estimated Cost and TWBC Estimated Contribution

7. BACKGROUND PAPERS

- None