

# Guildford Borough Council

Report to: Executive  
Date: 27 March 2025  
Ward(s) affected: Stoke  
Report of Strategic Director of: Finance and Resources  
Report Author: Charles Wood Senior Asset & Property  
Manager (Investment)  
Email: [Charles.Wood@guilford.gov.uk](mailto:Charles.Wood@guilford.gov.uk)  
Lead Executive Member: Richard Lucas  
Email: [Richard.Lucas@guildford.gov.uk](mailto:Richard.Lucas@guildford.gov.uk)  
Status: Part exempt  
Key decision: Yes

## To review the rent over Phase 2 Friary Centre (1 Onslow Street)

### 1.0 Executive Summary

- 1.1 The Council owns a large investment property portfolio comprising industrial, office and retail properties. The portfolio requires ongoing active property management to keep the estate in good order. Many of the tenanted investment assets are on leases which include a provision for regular rent reviews either to open market, or with fixed or indexed increases. In the case of open market rent reviews, officers will instruct external consultants to provide a rental valuation report and represent the Council in negotiating a settlement.
- 1.2 All agreements with an income or cost in excess of £200,000 over the life of the contract (which are key decisions) are now required to be approved by the Executive. In the case of rent reviews, the change in the annual rent is calculated to lease expiry.

### 2.0 Recommendation to Executive

#### That the Executive resolves to:

- 2.1 Approve a decrease in the annual rent from £64,907 per annum to £52,231 per annum with effect from the rent review date of 16 January 2024.

### **3.0 Reasons for Recommendations**

- 3.1 The proposed rent review settlement secures the rent at a level in line with market conditions as at the rent review date and therefore represents best consideration. The rental income will continue to contribute to the total annual rental income stream for the Council.

### **4.0 Status of Report**

The report is partially exempt for the purposes of the Council's Access to Information Procedure Rules because it contains commercially sensitive information. Under paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 the indicated paragraphs are exempt information as they contain information relating to the financial or business affairs of any particular person (including the authority holding that information). Disclosure of this information could prejudice future negotiations if the proposed arrangement is not completed and the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **5.0 Strategic Priorities**

- 5.1 **A more prosperous borough** – The proposed rental income directly supports the Council's finances and the running of its services for the benefit of residents.
- 5.2 **A resilient and well-managed council** – The proposed rent review settlement reflects the position of the local economy as at January 2024 and demonstrates excellent estate management of the Council's property portfolio by meeting statutory requirements in accordance with the Local Government Act 1972 and avoiding further financial burden.

### **6.0 Background**

- 6.1 The Friary Centre is leased to Head Tenant, M&G, for a term of 150 years from 27 June 1978. The lease splits the asset into two phases for rent review purposes. Phase 1 comprises the retail shopping centre along with the office at 3 Onslow St, and Phase 2 comprises the office building 1 Onslow Street. This rent review relates only to Phase 2. The open market rent review is every 10 years, with the subject rent review being due with effect from 16 January 2024.
- 6.2 1 Onslow Street is a stand-alone office building of early 1980s construction arranged over six floors together with a lower ground floor reception area and below that a basement car park which is

accessed via the basement of the adjacent 3 Onslow Street. The measured survey calculates a total floor area of circa 60,000 sq. ft.

- 6.3 As is common with historic leases, the rent review clause allows the rent to go up or down, in contrast to the great majority of modern commercial leases which are typically now upward-only. The rent review is calculated by reference to the 'Rack Rental Income'. This is calculated as 5% of the rent payable by an occupational subtenant, or to 5% of the open market rental value if the premises is vacant, on a series of detailed definitions, assumptions and disregards.
- 6.4 The building has been vacant for some years, so the Rack Rental Income is 5% of the open market rental value and then discounted by all outgoings and expenditure incurred by the Head Tenant during the previous 12 months. This includes maintenance, repairs and managing agent's costs, but excludes business rates.
- 6.5 Our appointed external valuer has been in negotiation for some months where the parties have both presented their comparable evidence. Appropriate adjustments were made relating to the definitions, assumptions and disregards in accordance with the legal advice sought for various clauses set out within the lease that were considered subject to interpretation.
- 6.6 The parties could not agree on the above points, so an Arbitrator was then appointed by the RICS (Royal Institution of Chartered Surveyors) to adjudicate the rent review. Arbitration can have the effect of shifting the liability for certain costs to one party depending on the outcome, but ultimately both sides will be exposed to considerable expense if this process is followed.
- 6.7 Before instructing the Arbitrator to progress the arbitration process, both parties subsequently served 'Calderbank offers' i.e., Without Prejudice offers to settle the matter, save as to costs. After a period of negotiation, the agents reached an agreement to recommend their respective clients agree to settle and conclude the matter at £52,231 per annum.
- 6.8 [EXEMPT INFORMATION]
- 6.9 The Head Tenant is required to continue paying a rent of £64,907 per annum until completion of a signed rent review memorandum therefore any overpaid rent since the 16 January 2024 will need to be reimbursed on completion of the matter.

6.10 [EXEMPT INFORMATION]

## **7.0 Options**

7.1 To conclude the matter as per officer recommendation.

7.2 To refer the matter to a third-party independent surveyor on application to the RICS Dispute Resolution service as set out within the terms of the lease in the event the parties are unable to reach a negotiated settlement. The application has already been made and the appointed Arbitrator remains on standby, pending further direction from the parties.

## **8.0 Consultation**

8.1 The Lead Councillor for Assets and Property, Councillor Ricard Lucas was consulted and supports the officer recommendation laid out in this report.

8.2 Ward Councillors were informed of this decision and no comments were raised.

## **9.0 Key Risks**

9.1 By failing to conclude the matter on the terms above, there is a risk that the tenant may withdraw their offer and instead pursue third party determination. This exposes the Council to additional costs, delays and the possibility of a lower outcome.

9.2 There is a risk the Council may face reputational damage by failing to respond to the market – which presently represents best consideration as at the date of the review – and failing to meet its strategic priorities.

## **10.0 Legal and Governance Implications**

10.1 The Council has the power to decide the rent review under section 1 of the Localism Act 2011 (the “General Power of Competence”) which states that a local authority may do anything a person can do so long as it is not specifically prohibited. This includes exercising the General Power of Competence for the Council’s own purpose, for a commercial purpose or for the benefit of others.

10.2 The Council has power to enter into legal documents under section 111 of the Local Government Act 1972, a local authority shall have 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 their functions.

10.3 In considering the proposals set out in this report, the Council has a general duty of best value under Section 3 of the Local Government Act 1999. The report sets out how the proposals meet this best value duty.

## 11.0 Financial Implications

**11.1 Annual Rent Reduction:** The core financial impact is the agreed reduction in annual rent from £64,907 to £52,231. This translates to a decrease of £12,676 per year. While this represents a loss of income compared to the previous rent, it is crucial to view this in the context of the market conditions at the date of the review and the vacancy of the property.

**11.2 Future Rent Review:** The next rent review is scheduled for 2034. This provides a degree of certainty in the Council's financial planning for the next decade. However, it is important to note that future market conditions could lead to further upward or downward adjustments at that time.

**11.3 Backdating the Rent Reduction:** The rent reduction is effective from the rent review date being 16 January 2024. As the agreement is being finalized in March 2025, this means the tenant, M&G, has overpaid rent for 14 months. The Council will be required to refund the overpaid amount.

**11.4** [EXEMPT INFORMATION]

**11.5 Risks of Non-Approval and Associated Costs:** Rejecting the proposed settlement carries financial risks. If M&G withdraws its offer and pursues third-party determination (arbitration), the council will incur significant costs, including:

- **Legal Fees:** Engaging external legal Counsel to represent the Council in the arbitration process.
- **Arbitrator Fees:** The costs associated with the RICS-appointed arbitrator, which can be substantial.

- **Valuation Fees:** Potential for additional valuation reports or expert witness fees.
- **Internal Staff Time:** The cost of council staff time dedicated to managing the dispute.

11.6 Furthermore, arbitration could result in a lower rent settlement than the currently proposed £52,231, leading to a further reduction in income. Avoiding these costs and risks is a key financial benefit of approving the recommendation.

11.7 **Best Consideration:** Approving the settlement allows the Council to ensure that the rent achieved represents the best consideration reasonably obtainable in the current market.

11.8 In summary, while the rent reduction represents a decrease in income compared to previous years, the proposed settlement aligns with current market conditions, exceeds budgeted expectations, avoids potentially significant dispute resolution costs and ensures compliance.

## **12.0 Human Resources Implications**

12.1 None.

## **13.0 Equality and Diversity Implications**

13.1 None.

## **14.0 Climate Change and Sustainability Implications**

14.1 None.

## **15.0 Next Steps**

15.1 Asset and Property officers to arrange a rent review memorandum to be signed by the parties.

15.2 Finance officers to arrange a refund of the overpaid rental income backdated to the rent review date.

## **16.0 Background Papers**

None.

## **17.0 Appendices**

Appendix 1: Exempt paragraphs 6.8, 6.10, and 11.4 of this report  
(Not for Publication)

**Report clearance progress:**

Finance	Solomon Akuffo	28 February 2025
Legal & Governance	Trusha Lukha	27 February 2025 (12 March 2025 Claire Beesly)
Human Resources	Francesca Chapman	27 February 2025
Equalities	Ali Holman	27 February 2025
Strategic Director	Richard Bates	3 March 2025