

**A separate report is submitted in the private part of the agenda in respect of this item, as it contains information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972 as amended. The grounds for privacy are that it refers to the identity, financial and business affairs of any particular person (including the authority holding that information) and it relates to information relating to an individual. The public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.**

Cabinet Member (Business, Enterprise and Employment)

2<sup>nd</sup> May 2014

**Name of Cabinet Member:**

Cabinet Member (Business, Enterprise and Employment) – Councillor Kelly

**Director Approving Submission of the report:**

Executive Director, Place

**Ward(s) affected:**

**Cheylesmore**

**Title:**

Land at Wheler Road, Coventry

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**Is this a key decision?**

**No**

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**Executive Summary:**

The Council is the freeholder of a site at Wheler Road, Coventry which is leased to Shay Property Investments S.ar.L (“SPI”) on a ground lease which expires in 2110. The property comprises a site with a purpose built retail warehouse unit.

The property is currently sublet to Matalan on an occupational sublease which expires in 2021. When Matalan took an assignment of the sublease from Homebase Limited the user clause was widened for the duration of the sublease and in consideration for this variation a payment was made to the Council.

To allow Matalan to continue to trade after 2021, when the occupational sublease expires, SPI have requested that the user clause be widened for the remainder of the ground lease term and will pay the Council a premium for this lease variation.

**Recommendations:**

The Cabinet Member is recommended to:

1. Approve the variation to the ground lease subject to the payment of a premium
2. Delegate authority to the Executive Director, Resources to complete the deed of variation and collect the agreed premium

**List of Appendices included:**

A plan of the site is attached

**Other useful background papers:**

There are no background papers

**Has it been or will it be considered by Scrutiny?**

*No*

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

*No*

**Will this report go to Council?**

*No*

## **1. Context (or background)**

- 1.1 The site, which is shown edged red on the attached plan, is leased by the Council to Shay Property Investments S.ar.L (“SPI”) under a ground lease for a term of 175 years from 1985 at a peppercorn rent. A purpose built retail warehouse unit was constructed on the site by the ground lessee. The lease restricts the use of the premises to a DIY centre, light industrial and warehousing.
- 1.2 In 2000 the Council entered into a Deed of Variation to widen the user clause to permit the property to be used by Matalan for retail use (Class A1). In consideration for the Deed of Variation a premium was paid to the Council. The consent under the Deed of Variation expires in 2021 when the sublease to Matalan comes to an end.
- 1.3 The Council has been approached by SPI with a request that the user is now widened for the remainder of the ground lease term, which will allow Matalan to continue to trade from the premises after 2021.
- 1.4 In view of the specialist nature of the retail warehouse market, through competition the Council appointed Savills to act on its behalf in negotiations with the ground lessee.
- 1.5 The premium has been recommended by Savills as representing best value under Section 123 of the Local Government Act 1972.

## **2. Options considered and recommended proposal**

- 2.1 **Accept the Offer-** Savills, who represent the Council recommend that the offer of a premium is accepted and the ground lease be varied.
- 2.2 **Decline the Offer-** it is open for the Council to reject the offer, which would result in the user provisions contained in the ground lease remaining restricted and Matalan being unable to trade from the property after 2021. SPI would then be seeking a new tenant for a DIY centre, light industrial or warehousing use. This would not generate a capital receipt and there would be no savings through debt reduction.
- 2.3 It is recommended that the Council accept the offer and enter into a Deed of Variation to widen the user clause in the ground lease for the remainder of the term.

## **3. Results of consultation undertaken**

- 3.1 None undertaken

## **4. Timetable for implementing this decision**

- 4.1 Providing Cabinet approval is secured, it is expected that this receipt will be received within this financial year

## **5. Comments from Executive Director, Resources**

- 5.1 Financial implications

This report if approved would generate a capital receipt, which in line with corporate policy would contribute to capital receipt assumptions within the Medium Term Financial Strategy (MTFS).

This receipt in particular will help to deliver receipt targets within the MTFS for disposals planned in relation to the Strategic Property FSR

## 5.2 Legal implications

The consideration for a Deed of variation to widen the user clause within the ground lease represents best value reasonably obtainable by the Council and has been verified by the Council's appointed agent. This meets the Council's obligation to obtain best value under the requirements in Section 123 of the Local Government Act 1972.

The Executive Director, Resources will complete the Deed of Variation in accordance with appropriate procedures and will collect the agreed consideration upon completion of the Deed.

## 6. Other implications

### 6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

The saving outlined will contribute to the Council maintaining a balanced budget in the medium term thus helping to preserve services for the people of Coventry.

### 6.2 How is risk being managed?

This is a capital receipt

### 6.3 What is the impact on the organisation?

The impact to the organisation will be minimal however it will generate additional work for officers within Place and Resources Directorate in dealing with the Deed of variation.

Property Implications

The proposed transaction will contribute towards the corporate financial targets as mentioned in 5.1 above

### 6.4 Equalities / EIA

An equality impact assessment is a process designed to ensure that a policy project or service does not discriminate against any disadvantaged or vulnerable people. Section 149 of the Equality Act 2010 imposes an obligation on Local Authorities to carry out an equality impact assessment when the local authority is exercising a public function.

An equality impact assessment has not been undertaken by officers as the proposal set out in this report relates to the granting of or the creation of a legal interest in the land and does not constitute a change in service delivery policy or the exercise of a public function.

### 6.5 Implications for (or impact on) the environment

None

## **6.6 Implications for partner organisations?**

There are no partner implications

**Report author(s):**

**Name and job title:**

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Place Directorate

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