

Report

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Report to:	Estates Committee
Date of Meeting:	23 August 2005
Report by:	Executive Director (Enterprise Resources)

Subject:	Proposed assignment of the Ground Lease on the Princes Gate office/retail development in Hamilton
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1 Purpose of Report

1.1 The purpose of the report is to:-

- ♦ note approval in terms of Standing Order No. 36(c) to the assignment of the Ground Lease of the Princes Gate office/retail complex at the Town Square in Hamilton.

2 Recommendation(s)

2.1 The Committee is asked to note the following recommendation(s):-

- (1) that the assignment of the Princes Gate Ground Lease from Development Options (Hamilton) Ltd. to Mr. Alan Cahoon be approved;
- (2) that the Executive Director (Enterprise Resources), in consultation with the Head of Legal Services if appropriate, is authorised to conclude the necessary legal agreements on behalf of the Council;
- (3) that in view of the requirement to progress this matter as soon as possible, and in terms of Standing Order No. 36(c), the action taken by the Executive Director (Enterprise Resources) in consultation with the Chair and an ex officio member be noted

3 Background

- 3.1 As part of the Hamilton Ahead Initiative, the Council entered into a Development Agreement, 150 year Ground Lease, Performance Guarantee and a Change of Control Agreement with Development Options (Hamilton) Ltd. (DOHL) to secure the construction and subsequent letting of the Princes Gate office/retail development. This is located adjacent to Asda on Hamilton Town Square. At practical completion, the Council granted a 150 year Ground Lease to DOHL. The Council's prior approval is required before DOHL can conclude an investment sale.
- 3.2 The Princes Gate development is now complete and almost fully let. DOHL have recently marketed the investment and selected a preferred purchaser.
- 3.3/...

- 3.3 In a letter dated the 5 July, 2005, solicitors acting for DOHL requested that the Council approve the proposed assignation. The Council's approval cannot be unreasonably withheld or delayed. In considering whether or not to approve the proposed assignation, the Council has to ensure that the proposed new Landlord is demonstrably capable of fulfilling all of the Landlord's obligations in the Ground Lease. These obligations include paying the Council the annual Palace Grounds Service charge, which is currently approx. £6,000 p.a. index linked for the remaining 145 years term of the Ground Lease.
- 3.4 The proposed new Landlord has been identified as Mr. Alan Cahoon. A Bank reference provided by Ulster Bank dated 7 July, 2005, confirms that in their opinion Mr. Cahoon is capable of funding the purchase price. The purchase price is unknown at this stage, but it will be a condition of our approval (if granted) that this figure is revealed to the Council.

4 Current Position

- 4.1 In the context of Hamilton Ahead it is unusual for an investment of this size to be purchased by a private individual acting in an entirely private capacity. The offer to purchase is conditional on Ulster Bank providing funding to Mr. Cahoon. According to Ulster Bank, their Credit Committee approval is expected to be forthcoming in the coming days. The offer from Mr. Cahoon is conditional on the sale being completed no later than Friday 29 July, 2005. To achieve this the Council's approval to the assignation must be guaranteed by the 15 July, 2005.
- 4.2 DOHL is a special purpose vehicle jointly owned by Watson Construction and the Royal Bank of Scotland. It was created for the sole purpose of constructing, letting and selling Princes Gate. Due to the above corporate structure (which is not unusual for developments of this sort), the Council insisted that DOHL sign a Change of Control Agreement, the effect of which is to prevent the sale of any or all of the shares in DOHL. Without this Agreement DOHL could have been sold (by a transfer of shares) at any time instead of an assignation, thereby avoiding the need to seek the Council's prior approval. As the development is now complete, let and about to be sold to a private individual with no other shareholders involved, the Change of Control Agreement has served its purpose and will automatically terminate on assignment.
- 4.3 There are no reasonable grounds on which the Council could refuse to approve the assignation. Consequently the Council is obliged to grant its consent.

5 Employee Implications

- 5.1 There are no employee implications.

6 Financial Implications

- 6.1 The new owner will be obliged to meet the ongoing payment of the annual Palace Grounds service charge, which is currently approx. £6,000 p.a. index linked for the remaining 145 year term of the Ground Lease. Any external legal fees and any reasonable internal costs incurred by the Council in connection with the assignation will be paid by DOHL.

7 Other Implications

- 7.1 None

8 Consultation

8.1 Internal and external legal advice has been sought in connection with this proposal.

**Iain Urquhart,
Executive Director (Enterprise Resources)**

28 July 2005

Link(s) to Council Objectives

- Creating Successful Communities – progressing key Town Centre improvements.

Previous References

- Enterprise Resources Committee – 9 November 1999. Approval of the Development Agreement, Ground Lease, Change of Control Agreement and Performance Guarantee.
- Estates Committee – 31 May 2005. Discharge of the Performance Guarantee.

List of Background Papers

- Letter dated 5 July, 2005, from Burness (DOHL's solicitors) formally seeking the Council's approval
- Bank reference dated 7 July, 2005, from Ulster Bank on behalf of Mr. Cahoon.

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:- Stephen Hulance, Partnerships Advisor, Regeneration Services

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