

Report to: **Cabinet**



Date of Meeting 6 January 2021

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Exemption applied: None

Review date for release None

Proposed Deed of Variation to Lease of Units 3 & 4 Salterton Road, Industrial Estate, Exmouth

Report summary:

To consider an application for a Deed of Variation to a long ground lease of Units 3 & 4 Salterton Road Industrial Estate, Exmouth and approve terms and conditions provisionally agreed with the lessee on behalf of the Council in respect of this matter.

Recommendation:

That Cabinet resolves to enter into a Deed of Variation on the provisionally agreed terms and conditions set out in the body of the report with delegated authority being granted to Service Lead – Place, Asset and Commercialisation in consultation with the Portfolio Holder, Economy and Assets to agree the specific terms.

Reason for recommendation:

The completion of a Deed of Variation on the terms and conditions set out in the report will assist the Council in obtaining a more favourable rent increase at the remaining review dates and provide greater certainty in the recovery of contributions towards the maintenance of the estate service road.

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Portfolio(s) (check which apply):

- Climate Action
- Coast, Country and Environment
- Corporate Services and COVID-19 Response and Recovery
- Democracy and Transparency
- Economy and Assets
- Finance
- Policy Co-ordination and Regional Engagement
- Strategic Planning
- Sustainable Homes and Communities

Financial implications:

Financial implications identified in the report.

Legal implications:

Legal Services will progress the Deed of Variation and ensure that any changes made are appropriate and continue to protect the Council appropriately.

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk; given that the Council's legal and surveyor's costs will be covered by the lessee irrespective of whether the transaction completes

Links to background information Not applicable

Link to [Council Plan:](#)

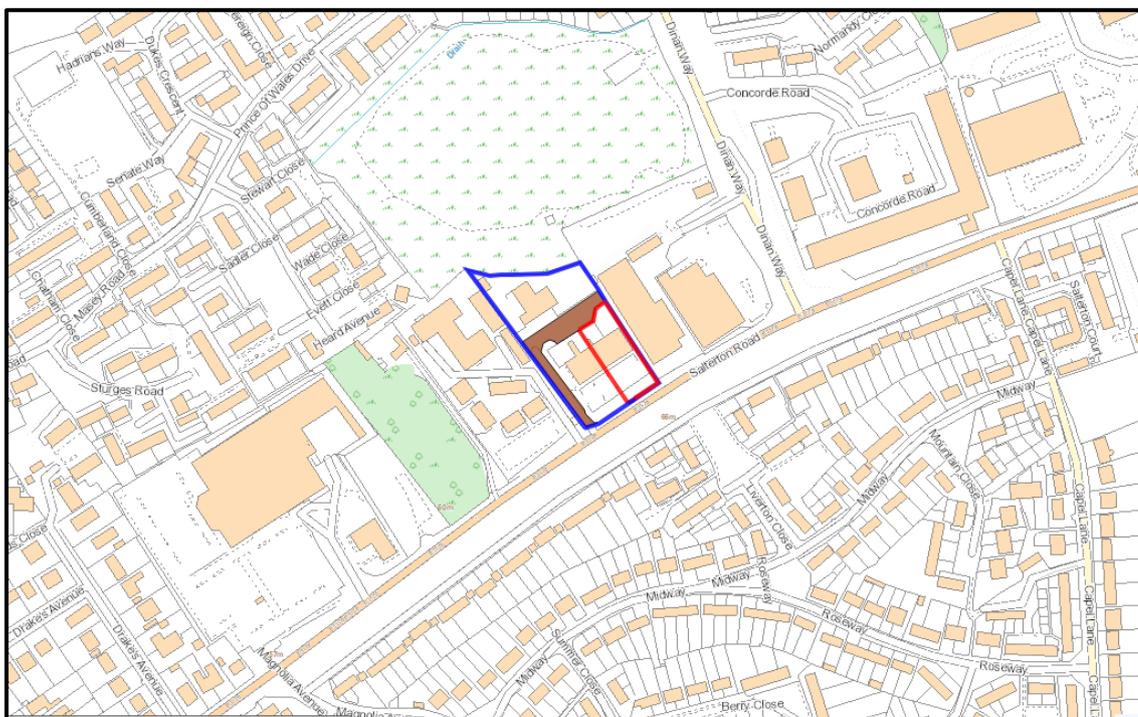
Priorities (check which apply)

- Outstanding Place and Environment
- Outstanding Homes and Communities
- Outstanding Economic Growth, Productivity, and Prosperity
- Outstanding Council and Council Services

Report in full

Background

East Devon District Council owns the freehold interest in the industrial estate at Salterton Road, Exmouth, which for identification purposes is shown edged in blue on the plan below:-



The various buildings are held by occupiers on long ground leases with the contractual terms ending between 2074 and 2098.

The property being specifically considered in this report, comprising Units 3 & 4 Salterton Road Industrial Estate, is leased to Hartfield Construction Ltd for a term of 125 years from 29 May 1973, with the unexpired term being 78 years. For identification purposes the extent of the demise is shown edged in red on the above plan:-

Under the provisions of this lease, as amended by various Deeds of Variation the rent is subject to review at 25 year intervals with the current rent of £2,250 per annum being subject to review on 29 May 2023. It is clear from the wording of the lease that the whole of the demised land can be assigned or sublet but the wording leaves it open to interpretation in legal terms as to whether assignment or subletting in part is permitted. The original user clause was very restrictive but this has been widened to allow any uses within B1 & B8 of the Town and Country Planning (Use Classes) Order 1987.

Hartfield Construction Ltd has applied to the Council for a Deed of Variation to its lease to specifically enable subletting of part of its demise and to further amend the User Clause to allow uses within B2, subject to any necessary planning consents, in addition to uses B1 and B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended)

The effect of this Deed of Variation will be to enable a sublease that has already been granted of part (ie Unit 3) without the previous knowledge or consent of the Council to be regularised and allow Hartfield Construction to proceed with any further subletting of Unit 3 to a third party for a term of years expiring 3 days' before that of the head lease whilst remaining in occupation of Unit 4.

The Present Position

Following lengthy negotiations with Hartfield Construction Ltd the following terms and conditions have been provisionally agreed for the completion of a Deed of variation:-

- The proposed Deed of Variation shall amend the original lease to provide part subletting of the original demise may take place, subject to the consent of the Council, the User Clause is amended to allow B2 Uses (of the whole) and specific rights of access are granted over the section of service road shown coloured brown on the plan included in this report, subject to paying upon demand a contribution towards its future maintenance, assessed according to user. On this latter point, this will make it easier for the Council to recover costs.
- The rent review provisions shall be amended to provide that at each review date the rent is to be assessed on an upwards only basis, assuming a vacant site with B1, B2 and B8 uses with the assumed term being for the residue of the original term from the review date.
- The lessee shall be responsible for the payment of the Council's reasonable legal costs, initially capped at £2,000 plus disbursements together with a surveyor's fee of £1,000.

If a Deed of Variation were to be completed on the terms and conditions set out above this would assist the Council in obtaining a more favourable rent at the remaining review dates with the widened user clause within the lease and greater flexibility on the part of the tenant by being able to sublet part of the demise. Furthermore, the proposed Deed of Variation would ensure that the Council was able to recover a contribution towards the cost of maintaining the estate service road identified on the plan included within this report. What is key in this instance, is that some of the lease terms are ambiguous and therefore whilst the Council is not seeking a premium, this having been refused by the lessee, the Council does benefit from new lease terms outlined above which will be clear and enhance the rental uplift at rent review.