Ettington Parish Council

Report to Council

Date: 13 March 2019

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| Item 14 – Appendix 6 | Lease WK348245 |

1. **Background**

In 2017 the Clerk sought advice from the National Association of Local Councils in respect of various matters with regard to Lease WK348245 (Appendix 1 to this report) between Ettington Parish Council and the Trustees of the Community Centre. Their response is at Appendix 2).

In July 2018 the Council agreed that that legal advice be sought in line with the response from the NALC Solicitors and their response at in Paragraph 2.

In addition, with the Community Centre Management Committee’s agreement a Youth Shelter has been built on land which is included in the lease.

1. **Legal Advice from Bonnell & Company**

 1.       In a 99 year Lease it is unusual in my opinion to find a break clause.  There is such a clause contained at clause 6.5 of the Lease which is very much in favour of the tenant and only requires the tenant to give no less than 6 months prior notice of the tenants desire to terminate the Lease whereupon the Lease determines.  The only precondition is that all the covenants in the Lease be observed and the rent in paid but of course the rent is only a peppercorn.  This obviously is a little weak so far as the landlord is concerned but I assume was part of the negotiation at the outset.

 2.       I see that there is an overage provision set out in the third schedule to the Lease which comes in to force if the tenant shall apply for planning permission for the development for profit of any part of the premises.  This to me is a little incongruence for the existence of a break  clause!  Be that as it may overage agreements now are notoriously complex and the 2 or 3 paragraphs of it may, at the appropriate time, raise questions of enforceability.

3.       I think in general terms the covenants are slightly weak.  I do have a concern in that “demised premises” which of course defines the property which will be bound by the various covenants in the Lease and all other of its terms, is simply described as the “land” edged red on the plan.  There is a separate definition of the “building” but it is possible significant to note that the actual formal grant is only of the “demised premises” consequently this I believe could impact upon the extent of the repairing and maintaining covenants set out in the Lease and I would feel much more comfortable, as landlord, if the definition of the demised premises also included any buildings thereon.

Referring again to the formalities of the demise I picked up a point made by the NALC and think that in hindsight the formal grant might have been better had it been shown to be for the benefit of the Charity; I have of course not seen the terms of the trust deed and if you would want me to have a look at that to review I will gladly do so.

With regard to the signatories I do not think that this is an issue at all; it is quite common for trustees to change and I would actually  refer here to the definition in the Lease at clause 1(j) and 1(n) which provide for successors in title to obviously being incorporated within the definition of lessees at any time in the future.

I am assuming that since the Lease was granted some nearly 17 years ago there have been no issues with regard to structural maintenance of the building but of course the Lease is a long one and it is not necessarily safe to assume that this will remain the case for the whole term!  A few tweaks might make the Lease a little more secure but obviously this would need the consent of the tenant and here I suspect is where politics will play a part!

1. **Recommendation**

The Clerk recommends that:

1. Councillors consider the legal advice given and raise any concerns/clarification to be sought;
2. A delegated Councillor and the Clerk arrange to meet with representatives of the Trustees and/or the Community Centre Management Committee in order that consideration be given to next steps.
3. Action Required
   1. To consider, debate and make a resolution with regard to recommendations