

To: City Executive Board

Date: 12 February, 2014

Report of: Regeneration and Major Projects Manager

Title of Report: REDBRIDGE WASTE RECYCLING CENTRE,
ABINGDON ROAD – AGREEMENT IN RESPECT OF
OUTSTANDING RENT REVIEWS

Summary and Recommendations

Purpose of report: To seek approval to enter into an agreement with Oxfordshire County Council whereby the County agrees it will not be able to activate the annual rolling break clause and will be committed to operating the waste recycling centre for a period of five years as part of an agreement concerning outstanding rent reviews.

Key decision? Yes

Executive lead member: Councillor Ed Turner

Policy Framework: Vibrant and Sustainable Economy

Recommendation(s): The Council enters into an agreement with Oxfordshire County Council whereby a rent of £20,000 per annum is agreed in respect of the review due on 25th December 2011, and the earlier outstanding reviews are not pursued by the City Council. This is on the basis that the County agrees it will not activate the annual rolling break and will be committed to operating the waste recycling centre for a period of five years from the date of the agreement unless an alternative site approved by the City Council is located and made operational.

Appendices

1. Risk Register
2. Not for Publication Confidential Appendix

Background

1. Oxfordshire County Council occupies land at Abingdon Road (known as Redbridge Waste Reception Centre) under a lease from Oxford City Council dated 24th December 1982.
2. The lease is for a term of 42 years from 25th December 1981. The lease permits the property to be used as a waste reception centre.
3. Oxfordshire County Council, as the tenant, has the ability to determine the lease at any time by giving the City Council 12 months' written notice.
4. The current rent payable is £5,000 per annum and this rent was set at the last rent review on 25 December 1993.
5. There are outstanding rent reviews due on 25th December 1999, 25th December 2005 and 25th December 2011.
6. The Council obtained independent advice regarding the rental value in connection with the rent review due on 25th December 2011. Based on the advice a rent review notice was served on Oxfordshire County Council in December 2011 quoting a rent of £100,000 per annum. Further details of the advice from the consultants is detailed in the Confidential Appendix (Appendix 2).
7. The Council also obtained legal advice as to whether or not the rent reviews due on 25th December 1999 and 25th December 2005 could still be activated. The legal advice confirmed the City Council could activate the reviews if it wanted to do so. Further information regarding the legal advice obtained is detailed in the Confidential Appendix (Appendix 2).
8. Following service of the rent review notice, negotiations took place between Oxfordshire County Council and the agents acting for the City Council. However a negotiated settlement was not reached due to the large difference between the market rent and what the County feel they can afford.

Options

9. Where a negotiated settlement cannot be reached in respect of a rent review, the lease contains provisions for the review to be determined by a third party. In this case the lease confirms the third party would act as an arbitrator. Either party could, therefore, apply to the Royal Institute of

Chartered Surveyors for the appointment of an arbitrator, who would then determine the rent payable.

10. This course of action has not yet been initiated by either party, as there have been separate direct discussions between the City Council and the County Council regarding a possible compromise agreement, which would encompass the rent reviews and the 12 month break clause.

The Proposed Agreement

11. The parties will agree that the County Council will not be able to activate the annual rolling break as from the date of the agreement although the County Council will be able to determine the lease on 6 months' notice but only if an alternative site is located which has been approved by the City Council and is made operational before the closure of Redbridge.
12. For the five year period the rent payable will be £20,000 per annum.
13. It will be a requirement that the site will be operated to provide a recycling and waste centre with at least the disposal options currently provided, which is open to the public and the local authority and trade customers and with public access on the same operating hours as existing.
14. The County will carry out the works required by the HSE necessary to keep the Centre operational with public access within six months of the date of the agreement.
15. The County, in carrying out the works, would seek to find a way of accommodating the local demand for access on foot to the facilities on site.
16. At the end of the five year period there would be a rent review to the open market rent following the rent review provisions in the existing lease.
17. If the tenant complies with the above obligations, the landlord will lose the right to implement the rent reviews due on 25th December 1999, 25th December 2005, 25th December 2011 and 25th December 2017.
18. If the tenant does not comply with the above obligations during the five year period the landlord will be entitled to implement the rent reviews detailed in paragraph 17.
19. As part of the agreement, there will be express recognition in the signage to the site that the City Council has provided the site at less than market rent to enable the site to operate at a lower cost.

Benefits to the City Council of Agreeing the Proposed Agreement

20. The agreement will secure the operation of a waste recycling facility (either at Redbridge or an alternative site in the City) for a period of five years, which would not otherwise be certain if the County Council was required to pay a market rent. The County Council have indicated they would determine the lease on 12 months' notice, as they are unable to pay a market rent. The agreement does therefore secure the delivery of a very important service in the face of significant cutbacks.
21. Without the facility operating it is likely there would be increased fly tipping which is clearly undesirable for the City. Furthermore, the public would have to use alternative facilities which will involve longer journeys and increased carbon emissions.
22. There would also be potential increased costs for the City Council, due to the increased fly tipping and the need for the Council to use the nearest alternative (Stanton Harcourt) resulting in an extra round trip of 20 miles and the resulting increased costs in terms of time and fuel.
23. If the site became vacant it is unlikely a commercial waste operator would operate the site in its current use because, as currently operated, it is a free service. There would, therefore, be little commercial merit.
24. Details of these increased costs are set out in the Confidential Appendix (Appendix 2).

Financial Considerations

25. The estimated annual rent due to the Council following completion of the December 2011 review and the estimated rent if the two earlier reviews were activated is set out in the Confidential Appendix (Appendix 2).
26. It can be seen the savings achievable for the Council by having the certainty of the waste reception centre being continued to be operated by the County Council are difficult to quantify and cannot be shown to equal the lost rent as a result of entering in to the agreement.
27. The figures show that on purely financial terms, even allowing for the potential cost benefits to the city of the site continuing to run, there would still be a loss for the Council due to the level of back rent due.
28. However, if the agreement is not implemented and the County vacate it is unlikely a commercial operator, assuming one can be found, would operate the site in the same way as the County, the result of which could be significant on going costs to the City through using an alternative site.

Risk Implications

29. A risk assessment has been undertaken and the risk register is attached as Appendix 1.

Environmental and climate change implications

30. The proposed agreement will potentially avoid increased fly tipping and the potential need for increased use of special collections.
31. There are also adverse climate change implications that will be avoided if the agreement is adopted. In particular, having a waste reception centre within the city boundary will result in a reduced carbon footprint when compared to a new site which may be set up some significant distance from the city.

Equalities Implications

32. None arising out of this report.

Legal Implications

33. The proposed agreement involves documenting the December 2011 review at a below market rent and not pursuing the earlier rent reviews. This goes against the general principle of receiving the best consideration reasonably obtainable, but the Constitution does make provision for situations in which, for good reasons, the Council may wish to sell or let at less than best consideration. The Constitution confirms that in such situations the transaction must be considered and approved by CEB.
34. For the reasons set out in this report it is considered appropriate to proceed on the basis of the agreement, even though it is not possible to demonstrate best value on purely financial terms.

Conclusion

35. It is recommended the Board approve the proposed agreement to secure the operation of the Redbridge Waste Recycling Centre by the County Council for a five year period unless an alternative site is located which has been approved by the City Council and is made operational before the closure of Redbridge

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Appendix 1

Appendix 1 - CEB Report Risk Register – Redbridge Waste Recycling Centre, Abingdon Road

No.	Risk Description Link to Corporate Objectives	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid	Monitoring Effectiveness					Current Risk	
Risk Score = Almost Certain		Impact Score: 1 = Insignificant; 2 = Minor; 3 = Moderate; 4 = Major; 5 = Catastrophic						Probability Score: 1 = Rare; 2 = Unlikely; 3 = Possible; 4 = Likely; 5 = Almost Certain							
CEB-001-CA 353	Oxfordshire County Council choose to not proceed with the proposed agreement.	1 3	P 3	Oxfordshire County Council decide the proposed terms are not acceptable.	Close contact with County and fast resolution of legal documents.	1 3	P 2	Action: Regeneration & Major Projects to instruct Law & Governance on the agreed Heads of Terms and to put in place a deadline for completion of the agreement by the County. If the deadline is not achieved, the City Council will pursue the reviews by way of arbitration. Outcome Required: Successful completion of the agreement.							
CEB-002-CA	The County does not comply with the requirements of the agreement following completion.	4	3	The County find another site from which to operate a waste reception centre	If the County does not comply with the terms of the agreement, the City Council will be able to implement the historic rent reviews and secure a market rent which the County will be liable to pay.	3	2	Action: On completion of the agreement to ensure the County Council carries out the require of works and maintains the centre as a waste reception centre. Outcome Required: Completion of the required works by the County Council and ongoing operation of the site as a waste reception centre.							

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