

Committee: Cabinet

Date: 2 August 2012

Title: Underlease of land at Gaces Acre, Newport

Portfolio Holder: Cllr R Chambers

Key decision: **No**

Item 16 Appendix

Summary

1. This report relates to a request by the Trustees of Newport Free Grammar School for consent to underlet land at Gaces Acre, Newport. This land is owned by the Council and leased to the Trustees. Newport Free Grammar School is to be converted to an Academy School. As part of the conversion process, the Trustees will be required to grant an under-lease of all land and buildings occupied by the Trust to the Academy. Under the terms of the current headlease, underletting is not permitted. Therefore, the Trustees seek the Council's permission to grant an underlease in these circumstances.

Recommendations

2. The underletting of the land at Gaces Acre, Newport should be permitted subject to:-
 - a. The Trustees entering a Licence to Underlet with the Council (with the form of underlease annexed to the Licence);
 - b. The underlease containing an absolute prohibition on assignment or further sub-letting
 - c. The underlease containing a covenant that the Academy will comply with the terms and covenants contained in the headlease; and
 - d. The Trustees agreement to pay the Council's costs in preparing, negotiating and completing the Licence to Underlet.

Financial Implications

3. None

Background Papers

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report:

Lease between (1) Uttlesford District Council and (2) The Trustees of Newport Free Grammar School dated 10 March 1999

Letter from Mills & Reeve LLP, solicitors for the Trustees of Newport Free Grammar School, dated 2 July 2012 requesting consent in principle to the underlease.

Impact

5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	A Licence to Underlet will be required to grant a one-off concession and allow the Trustees to underlet the land.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. Uttlesford District Council granted a 999 year lease of the land at Gaces Acre, Newport CB11 3RE to the Trustees of Newport Free Grammar School (the "Trustees") on 10 March 1999 (the "headlease").
7. The headlease relates to the land at Gaces Acre, Newport which is shown edged red on the plan annexed to this report. In summary, it requires a peppercorn rent to be paid by the Trustees to the Council on the 1st January each year. The Trustees are responsible for paying all outgoings (including taxes) which relate to the land. The headlease provides that the land is to be kept and managed as an informal nature reserve, and no structures are permitted to be erected on it other than bird-watching hides or similar structures consistent with the use as a nature reserve. The Council may terminate the headlease at any time if the Trustees are in breach of any of the covenants contained within it.
8. Of key importance is Clause 4(6) in the headlease which contains a covenant given by the Trustees to the Council not to underlet the land.
9. The solicitors for the Trustees have now written to the Council explaining that Newport Free Grammar School is to become an Academy School. As part of the process of converting to an Academy School, the Trustees will be required to grant a lease to the Academy of all the land and buildings occupied by the Trust. This will include the Trustees granting an underlease to the Academy of

the land leased from the Council at Gaces Acre, Newport. The solicitors for the Trustees have advised that they intend to use a template provided by the Department for Education in drafting the underlease.

10. However, given the covenant in the headlease prohibiting any underletting, the solicitors for the Trustees have requested the Council's consent in principle to an underlease being granted by the Trustees to the Academy School.
11. In considering this request, the Council will need to ensure that the Academy School would comply with the existing terms and covenants in the headlease. Further, the Council would want to be clear they are consenting to an underletting in this one instance only and that no further underlettings would be permitted.
12. This could be achieved by the Council requiring the Trustees to enter a Licence to Underlet. The Licence to Underlet would be a single consent for the Trustees to underlet the land at Gaces Acre, Newport in the circumstances of the Newport Free Grammar School converting to an Academy School. It would annex the agreed form of underlease that the Trustees could grant to the Academy School which would contain a requirement for the Academy School to comply with the terms and covenants in the headlease and prevent assignment of the lease and further sub-letting.
13. The Council would seek to recover its legal costs in preparing, negotiating and completing this Licence to Underlet.

Risk Analysis

14.

Risk	Likelihood	Impact	Mitigating actions
<i>Academy does not comply with terms of the headlease</i>	1 It is to be expected that the Academy would honour its contractual obligations	2 The council would be in a position to require the Trustees to enforce the terms of the lease to the Academy	Monitoring of performance of the covenants be undertaken on a risk sensitive basis

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.