
THE COACH HOUSE, NORTHDOWN PARK

To: **Cabinet - 23 August 2012**

Main Portfolio Area: **Commercial Services**

By: **Harvey Patterson, Corporate & Regulatory Services Manager**

Classification: **Restricted**

Summary: **To update Cabinet on steps taken in respect of the Coach House, North Down Park Margate to secure compliance with the terms of the lease.**

For Decision

1.0 Introduction and Background

1.1 As Cabinet will be aware the Coach House in Northdown Park is a Council owned listed building held by a local businessman on a 35 year lease which commenced on 18 May 1986. The current rental income is £300 per annum and the tenant is responsible for external and internal repairs and insurance. The lease provides for the ground floor of the premises to be used as a museum open to the public for a minimum of 100 days per annum for a minimum of two consecutive hours on those days between the hours of 9.00am and 6.00pm. The tenant can charge an admission fee not exceeding £1.00 which can be increased with Council's written consent. The use of the first floor of the Coach House is restricted to use as living accommodation for the occupation of a curator for the museum, nor can the first floor be used independently from the use of the ground floor.

1.2 The lease does not specify any steps by which the tenant is required to advertise or otherwise bring to the attention of members of the public, the opening dates and times of the museum, nor does it contain any provision relating to the quantity, quality, type or condition of the artefacts that may be on display.

1.3 There is a long history to the Coach House but in summary there have been two main issues of longstanding concern to the Council - disrepair and the failure to open the ground floor of the premises as a museum. The former issue has been resolved (at least for the time being) as the tenant carried out substantial repairs to the premises in 2010/11 in apparent response to the scrutiny investigation conducted by the Coach House Working Party in 2010. Notwithstanding, the tenant maintains the position that any disrepair to the premises was the fault of the Council and not a failure on his part to comply with his repairing obligations. Needless to say the Council does not accept this contention and a number of half-hearted attempts by the tenant to claim repayment of the costs allegedly incurred in carrying out of the recent repairs, have been firmly rejected.

1.4 In contrast the Council has had no success at all in relation to the other main issue - the failure by the tenant to open the ground floor of the Coach House as a

museum, for a minimum 100 day per year for the minimum opening hours. Apart from the very occasional assertion by the tenant that the Coach House is or has been open to the public, there is no independent evidence that at any time in the last 21 years or so the Coach House has ever been open to the public as a museum. In reality it serves as a private store for a number of artefacts owned by the tenant including the coach that originally belonged to the local land owner who gifted Northdown House, the Coach House and Northdown Park to the Council's predecessors in title, the former Margate Borough Council.

1.5 However, on the occasions when the tenant appears to concede that the ground floor of the Coach House is not after all open to the public as a museum, he is clear that this too is the Council's fault - because of allegedly repeated flooding of the ground floor of the Coach House due to an allegedly deficient surface water drain combined with the alleged failure of the Council to take measures to divert surface water run-off from the surrounding Park away from the Coach House. The fact that a recent survey commissioned by the Council and disclosed to the tenant shows the allegedly defective drain to be functioning normally as a surface water drain does not appear to shake the tenant's conviction that his 21 year failure to open the Coach House as a museum is all the Council's fault. What can be said for sure is that even though the tenant appears to be a meticulous record keeper, he has never been able to produce a single piece of evidence to support his claims of flooding.

1.6 On the 23 June 2011 the Cabinet considered a report concerning the outcome of compliance monitoring carried out by officers in respect of the Coach House at the request of the Overview & Scrutiny Panel. Officers reported that there was still no evidence to indicate that the Coach House was open to the public as a museum and Cabinet duly authorised the preparation and service of a Section 146 Notice ('Notice before Forfeiture'), this being the first step in securing compliance with the terms of the lease. A Notice was served on the tenant on 12 August 2011 which, in essence, required the museum use to commence by the 30 September 2011.

2.0 Current position

2.1 As there was no evidence of compliance by the requisite date, the Council was, subject to proof, entitled to apply to court seeking forfeiture of the lease. However, the advice of Counsel was that in the absence of clear requirements in the lease relating to publication or notification of opening times for the museum, the Council should undertake a sustained programme of compliance monitoring because the onus of proof was on the Council to prove non compliance, not on the tenant to show compliance. Officers have therefore been engaged in evidence gathering compliance visits to the Coach House over the last six months and statements are now being taken from relevant officers and members. Counsel will then be asked to advise on the adequacy of the evidence and the strength of the Council's case and should Counsel advise that the Council has a reasonable prospect of success, authority should be given for the institution of forfeiture proceedings against the tenant. However, Cabinet should note that the courts 'lean against forfeiture' and therefore, even if the Council succeeds in proving non compliance by the tenant with the relevant covenants in the Coach House lease, the tenant can apply for, and expect to be granted 'relief'. In other words, so long as the tenant undertakes to the court that he will now comply with the terms of the lease, the lease will continue subject to that requirement. It is therefore the case that it is unlikely that the Council will ever recover possession of the Coach House so long

the tenant is genuinely willing to open the ground floor of the Coach House as a museum in accordance with the requirements of the lease.

2.2 There is however a third issue of concern to officers that has emerged in the meantime and that is the apparent residential occupation of the first floor of the Coach House by relatives of the tenant - such occupation having no curatorial or functional connection to the use of the ground floor as a museum. This constitutes a clear breach of Clause 3(15) of the lease of the Coach House and it is therefore recommended that Cabinet authorises the service of a 'notice before forfeiture' in relation to this breach.

2.3 A notice before forfeiture must specify the relevant breach of covenant, require the tenant to remedy the breach and give a reasonable time for compliance. As this breach concerns the occupation of residential accommodation the time given for compliance in the notice should be not less than two months. If this achieves voluntary compliance within the time scales given, that is to say the vacation of the first floor of the premises, that will be the end of the matter. If not, this can form the basis of fresh forfeiture proceedings should it not be possible to combine this with any related proceedings in respect of the failure to open the premises as a museum.

3.0 Options

3.1 To authorise the institution of forfeiture proceedings in respect of the failure by the tenant to use the ground floor of the Coach House as a museum open to the public and to authorise the preparation and service of a notice before forfeiture in relation to the breach of Clause 3(15) of the lease of the Coach House.

OR

3.2 To take no further action in respect of the breaches of the Lease.

4.0 Corporate Implications

4.1 Financial and Risk Implications

4.1.1 There will be financial implications in the preparation of statutory notices and in instituting court proceedings. Although the lease provides that these costs are payable by the tenant, they will only be recoverable if the Council is able to prove a breach of covenant by the tenant - although this also means that the Council would still be entitled to its costs even if the court grants the tenant relief. Defended proceedings could incur costs in the region of £3,000 to £6,000 with about the same costs being incurred by the tenant. If the Council was unsuccessful, in addition to not recovering its own costs, the Council would be liable to meet the tenants costs - in practice a successful defendant can expect to recover about 70% of their costs.

4.1.2 The institution of forfeiture proceedings will also give the tenant the opportunity of making a counter-claim against the Council and in this regard as noted above the tenant is of the opinion that he considers the Council to be liable for the costs of the repairs carried out to the Coach House in 2010/11. He has not sought to justify the legal basis on which he consider the Council to be liable for all or any part of these costs beyond the repetition of an old allegation that Council workmen removed and never replaced some of the guttering at the Coach House.

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Consequently, it is the view of the officers that a counterclaim on this basis is lacking in merit. If the counterclaim does not succeed the Council will also be entitled to recover (about 70% of) the costs of defending the counterclaim.

4.2 Legal

4.2.1 As set out in the report.

4.3 Corporate

4.3.1 These actions are consistent with the principles of good asset management and in maintaining the value of the Council's Estate.

4.4 Equity and Equalities

4.4.1 There are no matters to consider under this heading.

5.0 Recommendation

5.1 That Cabinet receives and notes the report.

5.2 That subject to Counsel advising that the Council has a reasonable prospect of success, the Legal Services Manager, in consultation with Commercial Services Portfolio-holder, be authorised to institute forfeiture proceedings in respect of the failure by the tenant of the Coach House, Northdown Park, Margate, to comply with the covenants in the Lease requiring the Coach House to be used as a museum open to the public.

5.3 That in order to secure compliance with the tenant's covenant at Clause 3(15) of the Lease of the Coach House, the Legal Services Manager be authorised to prepare and serve on the tenant Notice pursuant to Section 146 (1) of the Law of Property Act 1925 on such terms (including time for compliance) as the Legal Services Manager, in consultation with the Director of Operations, considers necessary or expedient.

5.4 That should the service of a Section 146 Notice not secure compliance on the part of the tenant with the requirements of Clause 3(15) of the lease of the Coach House, the Legal Services Manager be authorised, in consultation with the Commercial Services Portfolio-holder, to institute forfeiture proceedings subject to obtaining favourable external legal advice on the prospects for success.

6.0 Decision Making Process

6.1 This is a non-key decision that can be taken by the Cabinet.

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