

CABINET MEMBER DECISION RECORD TEMPLATE

This form should be used to record Executive decisions taken by Cabinet Members

Decision Ref. No:
Responsible Officer: Gary Platt, Head of Property
Subject: Winton Health Centre, Alma Road – Grant of Lease
Decision taken: To grant a 40-year lease to The Alma Partnership Ltd at a peppercorn rent.
Reasons for the decision: It contributes towards the Council priority, <i>An Active Community</i> , particularly AC3 <i>Improving health and wellbeing and reducing health inequalities for residents</i> by ensuring the continuation of NHS medical services from the Alma Road site.
Call-in and Urgency: Subject to call-in.
Background: The Council has owned the freehold of 29-39 Alma Road since 1972. It currently comprises a medical centre and 29 flats. Following Local Government Reorganisation in 1974, the Dorset Area Health Authority had use of the medical centre by virtue of User Rights stemming from The Local Authorities (England) (Property etc.) Order 1973 (SI no. 1861). No rent was payable and these rights were not documented. Nonetheless, these arrangements operated satisfactorily until 31 March 2013, at which point the User Rights for the medical centre were vested in the Bournemouth & Poole Primary Care Trust (PCT). However, with the latest health sector reorganisations, the PCT took the view that User Rights for the medical centre would not transfer to the successor organisation (NHS Property Services). Instead, the PCT informed the doctors' practice that in order to remain in occupation of the building after 01 April 2013 they needed to negotiate a lease with the Council. Instead, the doctors submitted a claim for adverse possession to the Land Registry. This was, and is, contested by the Council and, after prolonged discussions, terms for a new lease have now been agreed with the doctors' practice. It is proposed to grant a 40-year lease to The Alma Partnership Ltd at a peppercorn rent. A landlord's break option will be incorporated, to facilitate redevelopment after 25 years. If notice is served under this provision then the landlord will be required to include a new medical centre in its development plans and to offer the doctors a lease of the new facilities at a rent set by an independent expert.
Options - and reasons for rejection: <ul style="list-style-type: none"> • To grant a lease at a commercial rent. This was not acceptable to the doctors'

- practice and was contrary to independent legal advice obtained by the Council.
- Not to contest the claim for adverse possession. This would result in the loss of a public asset and would be a significant impediment to the future redevelopment of the flats, which are towards the end of their functional life. Even if the doctors' practice was successful in its claim, the terms of their occupation would still need to be determined because use of this site is shared between the medical centre and the flats.

Consultations undertaken:

Extensive consultation has taken place with NHS England and the Bournemouth Clinical Commissioning Group, both of which support the need for a negotiated settlement.

Finance/Resource Implications:

The resource implications are neutral. Since its construction, the medical centre has always been occupied on a rent-free basis for the provision of NHS services and this will continue under the new lease. Any expenditure on the buildings or its grounds that is attributable to the medical centre will be recouped via a service charge. Previously, the Council had secured contributions to repairs on an ad-hoc basis.

Name:

Signature: (of Chief Finance Officer)

Date:

8/9/15

Legal implications:

The Council has sought advice from a leading barrister specialising in public sector law to establish the strength of the case for adverse possession and to advise on the rights and responsibilities of the parties.

He advises that the claim for adverse possession would probably fail, since the doctors have occupied the property at all times with the consent of the Council, the PCT and its predecessors. He further advises that the Council is holding the property on trust for the provision of NHS services and would be prevented from benefitting financially from any lease arrangements.

In view of this advice, the freehold interest is not unfettered and a lease at a peppercorn rent would discharge the Council's obligation under Section 123, Local Government Act 1972 to obtain best consideration. Even if this was challenged the Council could rely on the General Consents Order 2003 to authorise a disposal at below market value.

The doctors will withdraw their claim for adverse possession once the lease is completed.

Name: *SIAN BALLINGALL*

Signature:

Date: *4 September 2015*

Risk assessment:

A risk assessment shows this to be high-risk, reflecting both the risk to the provision of NHS medical services in this part of Bournemouth if agreement is not reached between the parties and the risk of the Council losing ownership of this asset. However, both risks will be mitigated completely with the grant of a lease in accordance with this decision notice.

Name: Gary Platt

Signature:

Date: *3/9/2015*

Impact Assessments:

An Equalities Impact Needs Assessment Screening Record and an Environment Impact Checklist has been completed. The proposal is to grant of a lease, which will not impact on the use of the building nor the services provided from it. Therefore, there will be no impact, positive or negative, in terms of equalities or environmental issues.

Information for/not for publication:

For Publication

Background papers:

Alma Road - EINA Screening Record
 Alma Road - Environment Impact Checklist
 Alma Road - Initial Risk Assessment

Any conflict of interest declared by a Cabinet Member who is consulted by the Member taking the decision	Name of Cabinet Member	Nature of interest	Details of any dispensation granted by the Monitoring Officer
No	N/A	N/A	N/A

Decision taken by:

Councillor Robert Lawton, Portfolio Holder for Housing

Signed:

Date of decision:

14.9.15

Date of publication of record of decision:

Date decision effective:

EINA Screening Record

Title of Policy/Service/Project	Winton Health Centre, Alma Rd - Grant of Lease
Date of screening	01 July 2015
Service Unit	Environment & Regeneration
Lead Responsible Officer	Gary Platt
Job Title	Head of Property
Members of the Assessment Team	Gary Platt, Martin Wilkins

If the answers to the following questions are Yes or Don't know, then a full EINA will need to be carried out.

Is there likely to be a positive or negative impact in terms of equalities?	No
Does it involve a significant commitment of resources?	No

It is not necessary at the screening stage to identify adverse or differential impact

It is important to remember that even when it is decided that a policy/service/project does not require an EINA, it remains subject to the general duties. Not carrying out a full EINA places our council at greater risk of legal challenge because it cannot use the EINA process to meet our [Public Duties](#) around equality. It also means, more importantly, that opportunities may have been missed to promote equality.

If you have answered no to the questions above and do not intend to carry out an EINA, please explain why?
The grant of a lease will merely formalise the rights of occupation of the doctors' practice operating from the premises. The services currently provided from the premises will be unaffected by the formalisation of these legal arrangements.

Issue: **Winton Health Centre, Alma Road - Grant of Lease**
 Meeting Date: **01 July 2015**
 Accountable Manager: **Gary Platt**
 Impact Assessor: **Gary Platt** ☎ 01202 451477 ✉ gary.platt@bournemouth.gov.uk

Key	
+	Balance of positive Impacts
?	Balanced or unclear impacts
-	Balance of negative impacts
n/a	Not applicable

Impact Criteria	Impact	Comments
Natural resources impact on use of natural resources - for example energy, water, raw materials	-	The grant of a lease will not impact on the use of the building nor the services provided from it. Therefore it will have no impact, positive or negative, in terms of natural resources.
Quality of environment contribution to safe and supportive environments for living, recreation and working	-	The grant of a lease will not impact on the use of the building nor the services provided from it. Therefore it will have no impact, positive or negative, in terms of quality of environment.
Bio-diversity protects and improves wildlife and habitats	-	The grant of a lease will not impact on the use of the building nor the services provided from it. Therefore it will have no impact, positive or negative, in terms of bio-diversity.
Waste and pollution effects on air, land and water from waste and emissions	-	The grant of a lease will not impact on the use of the building nor the services provided from it. Therefore it will have no impact, positive or negative, in terms of waste and pollution.
Council Priority and Objectives for Improving our Environment: <ul style="list-style-type: none"> • Reduce traffic congestion • Improve streetscene • Improve recycling & energy management • Respond to climate change • Improve quality of existing space 	-	The grant of a lease will not impact on the use of the building nor the services provided from it. Therefore it will have no impact, positive or negative, in terms of Council priorities and objectives for improving our environment.

Please complete and save your checklist, and email a copy to Lee Green, Environment Strategy & Sustainability Manager @ lee.green@bournemouth.gov.uk

G2 Initial Risk Assessment



PROJECT NAME:

Winton Health Centre, Alma Road - Grant of Lease

PROJECT NUMBER: *To be obtained from PMO*

PROJECT RISK LEVEL:

HIGH *

Table 1 - Suggested criteria on which to score the type of project (please tick appropriate category)					
CRITERIA				Score	
1) Duration of Project	0-6 months <input type="radio"/>	7-12 months <input type="radio"/>	Above 1 year <input checked="" type="radio"/>	6	
2) Effort	1-4 people (FTE) <input checked="" type="radio"/>	5-10 people (FTE) <input type="radio"/>	11+ people (FTE) <input type="radio"/>	1	
3) Business Impact	Service Unit/Service <input type="radio"/>	More than 1 SU <input type="radio"/>	Council/External <input checked="" type="radio"/>	10	
4) Priority	Desirable <input type="radio"/>	Highly Desirable <input type="radio"/>	Essential <input checked="" type="radio"/>	6	
5) Costs &/or Savings	Up to £250k <input type="radio"/>	£251k-£500k <input type="radio"/>	Over £501k or if project is to be funded through prudential borrowing <input checked="" type="radio"/>	28	
6) Risk Impact	Low Impact - Minor service disruption/inconvenience, minor injury, small financial loss, isolated service user complaint. <input type="radio"/>	Medium Impact - Service disruption, More serious injury or financial loss, adverse media coverage, numerous service user complaints <input type="radio"/>	High Impact - Significant or total service disruption, major disabling injury or fatality, high or catastrophic financial loss, adverse national media coverage, ministerial intervention in service running. <input checked="" type="radio"/>	10	
				Risk Score	61

A numerical rating is applied to each cell (see Table 1) For example a 'Priority' of 'Highly Desirable' is worth 3 points and a 'Cost' of '£501-£1m' is worth 5 points. Totalling the points scored for each 'criteria' gives a project score. This score is then mapped against a project-risk status in Table 1 below:

Table 1 - Risk Status	
Project Risk Rating	Points Total
Low	Between 10-18
Medium	Between 19-35
High	36+