



BONIFACE FIELDS' LEASE

TOWN COUNCIL MEETING

REPORT 56/21

12 JUNE 2021

The purpose of this Report is to provide Members with the advice from the Town Council's Solicitor's and the assessment of it by the Assets and Services Working Group.

No. DETAILS

1) BACKGROUND

- a) The Town Council considered the draft lease for the site from the Isle of Wight Council at its meeting of 21 June 2021.
 - b) Minute 68/21 of that meeting records the fact that *It was agreed that as the Town Council's Solicitor's advice on the documents was essential the matter would be referred to the Assets and Services Working Group in advance of the 12 July Town Council meeting.*
 - c) The advice was considered by the Assets and Services Working Group at its meeting of 29 June 2021 and a copy of the advice is attached to this Report.
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2) ASSESSMENT

- a) The conclusions of the Group's discussion and its advice to the Clerk was to request the inclusion of a break clause entitlement by the Town Council on the basis of a 12-month notice period and to ask the Solicitor to conduct relevant searches relating to the site.
 - b) The Solicitor is currently negotiating the break clause with the Isle of Wight Council and conducting the Environment, Local and Drainage Searches.
 - c) It is now apparent that the request to include a break clause at this late stage will cause problems and involve a change in the currently agreed rent arrangement.
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3) RECOMMENDATION

The Town Council is recommended to agree the Lease for the site subject to satisfactory outcomes from the Searches.

REPORT ON LEASE

Property:	<p>Land and buildings at St Boniface Fields Leeson Road Ventnor as more particularly described on page 6 of the Lease.</p> <p>The Park includes all land and buildings within the red edging as shown on the Lease plan.</p> <p>What types of buildings are located on the Property?</p>
Original Parties:	Isle of Wight Council (1) Ventnor Town Council (2)
Term:	35 years from completion of the new Lease.
Current Rent:	£1.00 per annum
Repairing Covenants:	<p>You are responsible for keeping the Property in good repair and condition – clause 20.</p> <p>If the Landlord gives you a notice stipulating a breach of covenant then you have to remedy the breach within 2 months of the date of the notice – clause 28. If you do not comply within this timescale or fail to commence the works within 2 months (or earlier in the case of emergency) then the Landlord has the right to enter the Property and undertake the remedial works at your expense – clause 28.2 and 28.3.</p> <p>Have you considered limiting your repairing by reference to a Schedule of Condition? The purpose of the Schedule is to document (formal survey or photographs) the physical structures, so that you are not required to return these to the landlord in any better condition than exists as at the date of the Lease.</p>
Decoration:	You must keep any buildings on the Property in good decoration – see clause 21.
Authorised Use:	<p>Please see the definition of “Permitted User” as set out in the definitions. You can only use the Property as allotments, community and leisure use. Is this adequate?</p> <p>Clauses 25 and 26 sets out some “do’s and don’ts” in connection with your use of the Property, which I trust are self-explanatory.</p>
Insurance:	<p>It is your obligation to insure the Property in accordance with clause 7. This includes a reinstatement value of not less than £350,000. No doubt this relates to the kiosk and band stand.</p> <p>In addition, you must also have in place public liability insurance of not less than £10 million.</p>

	<p>You must produce to the Council, on demand, a copy of the latest buildings insurance policies.</p> <p>You must pay any revaluation costs incurred by the Landlord in assessing the correct reinstatement value for the Property. Any such revaluation cannot take place more than once every 3 years.</p> <p>Please familiarise yourself with the terms of clause 7, so that you can ensure that your insurance policy complies with the terms of the Lease.</p> <p>If the Property is destroyed or damaged by an insured risk then you must utilise any insurance monies received in reinstating the damage and/or destruction.</p> <p>If you fail to insure the Property adequately, the Council has the right to insure itself and re-charge you the cost of doing so.</p>
Rent Review:	None
Outgoings:	You are responsible for all outgoing in connection with the Property – clauses 8 and 9.
Signs:	The Council have included some covenants with regard to signage – see clause 23.
Service Charge:	None.
Interest on arrears:	This is payable at the rate of 4% above the base rate of Lloyds Bank from time to time.
Alterations:	<p>You are not permitted to make any structural alterations or additions to the Property – clause 22. This includes changes to boundaries.</p> <p>Are there any changes which you need to make to the Property?</p>
Assignment:	You are permitted to assign your Lease, subject to obtaining the prior written consent of the Landlord which cannot be unreasonably withheld or delayed – clause 14. You are only permitted to assign the whole of your Property and not part.
Underletting:	<p>Underletting of part is permitted – clause 15.</p> <p>Underletting of whole is not permitted.</p> <p>Do you have plans to underlet? If so, you will need the prior written consent of the Landlord. This will include paying their legal and surveyor costs.</p>
Break Clause:	None. Has this been considered? A lease is a liability and it

	would be prudent to include a break clause. This would allow you the unilateral right to end the lease.
Planning:	In the unlikely event you need to apply for planning then you cannot do so without obtaining the prior written consent of the Landlord.
Other Clauses:	<p>I would draw your attention to clause 8.2 which states that you cannot undertake any course of action which may alter/ affect the rateable value of the Property without the prior written consent of the Landlord.</p> <p>You must pay the Landlord's legal costs on a full indemnity basis as set out in clause 12 which is standard. This includes any costs incurred by the Landlord in giving consent to the terms of the Lease, preparing notices for a breach of Lease/rent arrears.</p> <p>You must also make a contribution towards the Landlord's legal costs in the sum of £400 – see clause 12.3.</p> <p>You must comply with all statutory requirements in connection with the Property i.e. disability discrimination, fire risk assessment etc.</p> <p>You must comply with all requirements of the fire authority and/or Landlord in relation to fire precautions at the Property/building.</p> <p>The Landlord can give you notice at any time requiring access to the Property in order to ensure you are complying with your lease obligations and/or should he require access to the Park for repair and maintenance.</p> <p>If you require consent under the terms of the Lease or the landlord has to pursue you for breach of any of its terms or a Schedule of Dilapidations has to be served then the landlord is entitled to recover these costs from you in their entirety.</p> <p>The lease contains a standard indemnity by you in favour of the Landlord against any claims, liabilities or damages incurred as a result of an act or omission by you on the Property.</p> <p>At the end of the term, you must comply with clause 24.</p> <p>The Lease can be terminated by the landlord if the rent or any monies due are late or outstanding for 21 days or more or you breach the term of the Lease or insolvency proceedings are commenced against you. This is a severe sanction from your point of view and is a standard Lease term. Ultimately the landlord needs to be able to enforce the obligations contained therein against you and there needs to be a sanction for this.</p>
Rights Granted to Tenant:	You have NOT been granted any rights over the Landlord's adjoining property for the benefit of the Property. Do you need

	<p>any rights?</p> <p>The Landlord reserves certain rights over your Property for the benefit of the Council's adjoining land – see clause 4. This includes the following:-</p> <ol style="list-style-type: none"> 1. The right to repair, maintain or replace any services through the Property. 2. The right to access the Property for any reasons contained within the Lease. <p>When exercising the aforementioned rights the Council must make good any damage caused. You will see I have added a qualification in clause 4.4 with regard to causing you minimum interference and interruption.</p>
Security of Tenure:	<p>This Lease is an EXCLUDED tenancy within the meaning of the Landlord & Tenant Act 1954. This means at the end of the term you are NOT entitled to a new Lease.</p>
Deed of Surrender and Variation:	<p>The Lease includes an obligation on Ventnor Town Council to surrender, if called upon by the Isle of Wight Council, the area edged in blue on the Lease Plan. Please see clause 38, together with the draft Deed of Surrender and Variation.</p> <p>The Isle of Wight Council can only serve notice under this clause if the land edged in blue is required for educational purposes. What is the thinking behind this clause?</p> <p>If the Council serves notice requiring the return of the land edged in blue, then you must enter into the Deed of Surrender and give vacant possession within three months of the notice. Are you able to comply with these timescales?</p> <p>You need to make sure that no-one is in occupation of the land or uses it in a way which will result in you breaching this clause, should the Council serve notice.</p> <p>If this clause is likely to cause you issues in the future, then please let me know.</p>