



**REPORTS FOR DECISION BY THE  
CABINET MEMBER FOR CORPORATE SERVICES**

Date Issued: **18 November 2010**

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**A Record of Decision will be issued following the conclusion of 5 clear working days from the date of issue of the Report**

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# Agenda Item 1

## MAIDSTONE BOROUGH COUNCIL

### CABINET MEMBER FOR CORPORATE SERVICES

#### REPORT OF ASSISTANT DIRECTOR OF ENVIRONMENT AND REGULATORY SERVICES

**Report prepared by: Christopher Finch**

**Date Issued: \_18 November 2010**

#### **1. New Leases for New Units at Park Wood**

##### 1.1 Issue for Decision

1.1.1 To consider an application to lease industrial units at Park Wood Industrial Estate

##### 1.2 Recommendation of The Assistant Director of Environment and Regulatory Services

1.2.1 That the Cabinet Member for Corporate Services agrees to the letting of two industrial units at Park Wood Industrial Estate, upon the terms set out in the **Exempt Appendix** which accompanies this report.

1.2.2 That in consideration of the number of new units recently transferred to the Council (14), the Assistant Director of Environment and Regulatory Services is given delegated authority to agree terms for all future lettings within Equilibrium Estate, Park Wood providing such lettings conforms to the criteria set out at **Appendix 1**.

##### 1.3 Reasons for Recommendation

1.3.1 On July 6<sup>th</sup> 2010 the Council took possession by way of a 999 year lease of 14 industrial units for the purpose of letting to starter and growth businesses.

1.3.2 The properties have been advertised using the Council's internet pages, and despite the current difficult market, the Council has received requests for leases of two units.

1.3.3 The Council requires an initial rent of £6.00 per square foot per annum which is considered satisfactory in the current commercial market-place and the premises have been marketed through the Council's website on this basis.

1.4 Alternative Action and why not Recommended

1.4.1 The Cabinet Member could decide that the units should be leased as non-business start-up/growth units, however the head-lease precludes such use, which must be to starter or growth businesses.

1.5 Impact on Corporate Objectives

1.5.1 The proposed letting support the Council's policies of prosperity and increasing business opportunity within the Borough

1.6 Risk Management

1.6.1 With any new business venture there is a risk that success may not become the operation, resulting in failure of the Tenant. It is expected that although the Council would wish every new business to succeed and prosper it is inevitable that some will not, however this is considered an acceptable risk given the purpose of the units.

1.7 Other Implications

1.7.1

1. Financial	X
2. Staffing	
3. Legal	X
4. Equality Impact Needs Assessment	
5. Environmental/Sustainable Development	
6. Community Safety	
7. Human Rights Act	
8. Procurement	
9. Asset Management	

1.7.2 Financial. The subsequent letting of these units will realise an annual revenue receipt for the Council

1.7.3 Legal. Any new tenancy will require the resource of Legal Services to prepare and draft the necessary lease.

1.8 Conclusions

1.8.1 None

1.9 Relevant Documents

1.9.1 Appendices

1.9.2 **Appendix 1** Letting Criteria

1.9.3 **Exempt Appendix 1**, Heads of Terms

1.9.4 Background Documents

1.9.5 None

**IS THIS A KEY DECISION REPORT?**

Yes

No X

If yes, when did it first appear in the Forward Plan?

.....

This is a Key Decision because: .....

.....

Wards/Parishes affected: Park Wood, Boughton Monchelsea

**How to Comment**

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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# **MAIDSTONE BOROUGH COUNCIL OCCUPATION OF COUNCIL PROVIDED BUSINESS PREMISES**

## **Scope Of Document**

This document outlines the purpose of 'Council Provided Business Premises' and covers:

- \_ The Purpose of The Premises
- \_ Limitation of The Premises
- \_ The Criteria Required to Permit Occupation.
- \_ The Legal Framework of the Landlord-Tenant Relationship
- \_ Acceptable Criteria
- \_ The Structure of the Lease
- \_ The Structure of Occupation
- \_ Options at Determination
- \_ Second Generation Units

## **Purpose of The Premises**

Maidstone Borough Council strives to encourage the starting of new businesses, and for those businesses to grow, flourish and stimulate employment. To assist new and fledgling businesses, Maidstone Borough Council provides a number of small B1 class units (light industrial/office) at economic rents to encourage business growth. The Council owns two units c. 500sqft each and seven units c.775sqft each, the portfolio has further increased, with the addition of new units at Equilibrium Park Wood, being: five units c.980sqft, two units c.1044sqft each and seven units c.1440sqft each.

## **Limitation of The Premises**

The purpose of the units is, as outlined above, to encourage new business growth, it is not the function of these units to provide an indefinite period of occupation, and a control regime is contained in the Legal Agreement to manage any such outcome. The units are designed as new business/fledgling/growth units and their purpose is not to provide 'cheap rents' to trading companies or for companies to 'downsize' into. (but also refer to 'Second Generation Units' below)

## **Legal Framework**

The occupation of commercial property is, in the main, governed by the mechanism of the Landlord and Tenant Act 1954 ptII (the Act) and case law. The Courts have decided in a number of cases what defines an occupation of premises for business purposes and whether such

occupation is exclusive or not. Any process that does not take into account the risks involved in ignoring the Act or subsequent case law exposes itself to high risk. Beneficial occupation of business premises will result in the occupier being granted rights of security unless it is agreed beforehand that such rights do not apply by contracting out under Section 38 of the Act.

### **Acceptable Criteria**

For a business to be considered as eligible for Council Provided Business Premises it would need to satisfy the following criteria:

- \_ Have been trading for less than 1 year  
(but also refer to 'Second generation Units' below)
- \_ Not be a subsidiary of a larger Company
- \_ Not be a new start-up allied to a larger Company
- \_ Not be the subject of a management buy-out or similar

### **The Lease**

Any occupation of Council Provided Business Premises will be by way of a Lease 'outside the security of tenure provisions of the 1954 Act'. The term of the agreement would be for a maximum of five years commencing at an 'economic rent', there would also be an Estate and Service Charge element.

- \_ Rental would commence at an 'economic level' and be 'stage-stepped' to a commercial level during the term of the Lease.
- \_ A deposit held against tenant performance (not to be used for payment of rent) and equating to the value of three month's rent would be required. Refund subject to eighteen month's satisfactory occupation, or on receipt of notice to quit. Both subject to satisfactory condition of the premises.
- \_ Estate and Service Charges would cover the cost of keeping the common parts in good order, routine and other maintenance, rates would also be included in the Service Charge. These would be set and fixed for the year, and based upon the previous year's 'actual'.
- \_ Rent and Charges would be payable monthly in arrears and by direct debit only –no cash or cheques.
- \_ The Tenant would benefit from a break clause, actionable upon one month's notice –effective on a rent due day.
- \_ Other clauses would be based upon a 'standard' lease

### **Occupation and Use**

The 14 new units are designed for light industrial/manufacturing uses. Other uses such as car/motorcycle repairs or valeting, catering provision (take-away or on-licence) car/motorcycle sales, immoral or pornographic use would not be permitted. Nor would hazardous occupations such as:

fuel storage and sales, chemical manufacturing, storage or sale of fertilizer, storage or sale of any weaponry, etc.

### **Options at Determination**

Part of the purpose for the Council providing the units, is to encourage new business to grow and flourish. There is only a finite supply of these units creating a risk that once in, the Council could be reluctant because of PR, to move businesses out to make way for new fledgling businesses to occupy. The mechanism of the lease is a 5 year agreement, at the end of 5 years the Tenant must leave, unless new terms are agreed. The Council may not in a period of economic downturn or a 'bear market', wish to determine these tenancies and; in such circumstances, a further term may be offered, but the Council would reserve a right to increase the rent by a pre-determined annual percentage. In times of higher demand, this could be used as a mechanism to encourage vacation.

### **Second Generation Units**

The latest development of 14 units to benefit the Council will contain a number of medium sized buildings, namely 7 units on approximately 1440sqft. These units are larger than what is generally perceived to be 'starter units' and these would be let on commercial terms to Small/Medium Enterprises, or to existing Council Business Tenants wishing to migrate to larger premises.

These units would be let on terms similar to the starter units but on commercial rents with no 'stage-step' reviews. Again the lease term would be for five years, but with no Tenant break, other terms and conditions would be as 'start-up' units.

# Agenda Item 2

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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