

## Notice of NON KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendix A is not available for public inspection as it contain) or relates to exempt information within the meaning of paragraph 1 & 3 of Schedule 12A to the Local Government Act 1972. It is exempt because it refers to financial and business affairs of the Tenant and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

<b>Subject Heading:</b>	<p><b>Subject Property:</b> Kitchen and adjoining store room on the first floor at MyPlace, 343 Dagnam Park Drive, Harold Hill, Romford, RM3 9EN</p> <p><b>Event:</b> Deed of Variation</p>
<b>Decision Maker:</b>	Mark Butler - Assistant Director of Regeneration & Place Shaping
<b>Cabinet Member:</b>	Councillor Paul McGeary – Cabinet Member for Housing and Property
<b>SLT Lead:</b>	Neil Stubbings - Strategic Director of Place
<b>Report Author and contact details:</b>	<p>London Borough of Havering (LBH)          Luke Kubik          Estates Surveyor          Property Services          Town Hall          Main Road          Romford          RM1 3BD</p> <p>Tel: 01708 434 176          E: <a href="mailto:luke.kubik@havering.gov.uk">luke.kubik@havering.gov.uk</a></p>
<b>Policy context:</b>	Asset Management Plan

**Non-key Executive Decision**

<b>Financial summary:</b>	The financial aspects for the transaction are detailed in the <u>EXEMPT Appendix A</u> to this Report
<b>Relevant Overview &amp; Scrutiny Sub Committee:</b>	Place
<b>Is this decision exempt from being called-in?</b>	<b>The decision will be exempt from call in as it is a Non key Decision</b>

**The subject matter of this report deals with the following Council Objectives**

- People - Things that matter for residents ( )
- Place - A great place to live, work and enjoy (x)
- Resources - A well run Council that delivers for People and Place (x)

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

#### Background

The kitchen and adjoining store room on the first floor at MyPlace, 343 Dagnam Park Drive, Harold Hill, Romford, RM3 9EN (“the Property”) is held on a 6-year lease dated 18 October 2024 from 18 October 2024 to 17 October 2030 (“Lease”), which is excluded from the Landlord & Tenant 1954 Act. The Property is used for a hot and cold food, and drinks concession with a menu that includes healthy options to promote healthier eating.

The Lease contains a break clause at clause 35 which fails to capture the intentions of the parties. The Heads of Terms stipulated that the “The Landlord (being the Council) will be entitled to break the Lease giving the lessee not less than 6 months' written notice.” The Lease has been drafted to say the break clause will come into effect after the end of the contractual term, which was not the intention.

A Deed of Variation is required to remedy the break clause in the Lease to record a rolling break anytime from the commencement of the Lease.

#### Recommendations

It is recommended that the Council agrees to a Deed of Variation and the Estates Surveyor, LBH - Property Services, will instruct Legal to draw up the deed of variation to remedy the break clause.

#### Decisions

Formal authority is hereby given for the Council to agree to a deed of variation and the Estates Surveyor, LBH - Property Services, to instruct Legal to draw up the deed of variation to remedy the break clause.

### AUTHORITY UNDER WHICH DECISION IS MADE

Havering Council’s Constitution Part 3.3 scheme 3.3.5 (2<sup>nd</sup> April 2024 - current)

8.1 To be the Council’s designated corporate property officer, responsible for the strategic management of the Council’s property portfolio, including corporate strategy and asset management, procurement of property and property services, planned and preventative maintenance programmes, property allocation, security and use, reviews, acquisitions and disposals, and commercial estate management.

**Non-key Executive Decision**

**STATEMENT OF THE REASONS FOR THE DECISION**

The break clause fails to capture the intentions of the parties and needs to be remedied.

**OTHER OPTIONS CONSIDERED AND REJECTED**

Option: Not to seek a Deed of Variation  
Rejected: The break clause in the lease has been incorrectly drafted and does not reflect what was agreed in the original heads of terms.

**PRE-DECISION CONSULTATION**

None

**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Luke Kubik  
Designation: Estates Surveyor  
Signature:



Date: 27 February 2025

## Part B - Assessment of implications and risks

### **LEGAL IMPLICATIONS AND RISKS**

The report seeks approval for the Council as Landlord to enter into a deed of variation to rectify the clause 35 of the Lease which relates to a landlord's break. The clause provides that the landlord can terminate the Lease at the end of the contractual term provided that six months notice is given to the tenant. The clause does not give effect to the intentions of the parties which was to allow the landlord to terminate the lease at any time after the commencement date provided that six months prior written notice is given to the tenant.

The deed of variation will remedy clause 35 to reflect the parties intentions and terms agreed. The deed of variation will be subject to the necessary due diligence undertaken by Legal Services.

The Council has a general power of competence under Section 1 of the Localism Act 2011, which gives the power to do anything an individual can do, subject to any statutory constraints on the Council's powers ("the General Power"). The recommendation in this report is in keeping with the General Power.

### **FINANCIAL IMPLICATIONS AND RISKS**

This report does not contain any financial changes to the existing lease.

The costs of drawing up the Deed of Variation will be paid for from existing budgets

### **HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

No human resources implications and risks have been identified.

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

### **Non-key Executive Decision**

Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

An EqHIA (Equality and Health Impact Assessment) is usually carried out and on this occasion this isn't required.

The Council seeks to ensure equality, inclusion, and dignity for all in all situations.

There are no equalities and social inclusion implications and risks associated with this decision.

### **ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

No Environmental and Climate Change implications identified.

### **BACKGROUND PAPERS**

None

### **APPENDICES**

**Appendix A** Deed of Variation Summary Exempt

**Non-key Executive Decision**

**Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

**Details of decision maker**

Signed 

Name: Mark Butler

Position: Assistant Director of Regeneration & Place Shaping

Date: 01/03/2025

**Lodging this notice**

The signed decision notice must be delivered to Democratic Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_