

Decision under Delegated Powers

Officer Requesting Decision

David Hankin – Team Leader: Regeneration and Economic Development

Officer Making the Decision

Clare Hodgson – Head of Finance and Property Services

Recommendation

That the land outlined in red on the attached plan and located off Railway Terrace, Loughborough, is transferred to Preci Spark Ltd at nil cost and that the balance of the land outlined in blue is leased to the Great Central Railway plc.

Reason

To remedy a disputed title over land required by Great Central Railway plc so as to enable the reconnection of the heritage railway while providing compensation for the loss of existing car parking spaces serving Preci Spark Ltd.

Authority for Decision

Under paragraph 8.3 of the Constitution (Delegation of Executive Functions) the Head of Finance and Property Services is authorised under Article 5,

To approve land and property disposals that have been undertaken in accordance with the Asset Management Strategy and the Land and Property Disposal Policy where either:

- a) the freehold value is less than £100,000 or less, or
- b) the leasehold value is £50,000 or less.

Decision and Date

C.L Hodgson 23/12/2016

Background

Policy Context

The land off Railway Terrace, to which this report relates, has been the subject of a previous delegated decision approved on 4 July 2016 (Ref: DD040 16/17). The policy context is set out under the report informing that decision. This report should be read in conjunction with that earlier published decision and report.

Previous Decisions

The purpose of the published delegated decision was to regularise a disputed title over an area of land registered as falling within the ownership of the Borough Council (Title LT 202296 refers) which Preci Spark had occupied in part as a car park for in excess of 20 years, and over which the company could have claimed adverse possession.

The land had originally been acquired by the Borough Council as part of a land exchange with Preci Spark dating from January 1988, apparently for the purposes of securing the option for enabling the reconnection of the Great Central Railway. It has been the contention of Preci Spark that the boundary had been incorrectly drafted in the transfer agreement. On the basis of long established patterns of land use supported by photographic evidence, together with the mutual commitment of all parties involved to enable the reconnection of the GCR, that claim has not been challenged.

Proposals for reconnecting the railway are progressing under the “Bridging the Gap” project; negotiations have reached an advanced stage with Network Rail and partners for the construction of a bridge to carry the heritage railway over the Midland Main Line railway.

Upon completion of the bridge over the Midland Main Line the next phase of the project will see the construction of a viaduct extending southward, spanning the disputed land occupied by Preci Spark and the Railway Terrace access road to the County Council’s recycling facility.

Before entering into an agreement attached to the construction of the Midland Main Line bridge, Preci Spark is anxious to safeguard its operational parking. Equally the Council and GCR wish to ensure that there is no impediment to the eventual construction of the proposed viaduct.

To that end a land exchange was agreed and approved under the published delegated decision at nil cost to either party. That transfer envisaged land required for the construction of the viaduct supporting abutments remaining within the ownership of the Borough Council with intervening land being transferred to Preci Spark to permit the construction of compensatory parking bays beneath the viaduct. As previously reported, the rights for GCR to overfly the realigned car park were to have been secured by means of a flying leasehold.

Negotiations – Transfer of Land to Preci Spark Ltd.

The approved position has informed ongoing negotiations between the principals and their legal advisors. During those negotiations Geldards, solicitors instructed by the Council, have advised that the solution proposed was complex and difficult to incorporate within a legally binding agreement. It was not practical for the Council to lease the land for the viaduct abutments to GCR with Preci Spark separately leasing the air space. Accordingly it has been recommended that the principals' objectives can more easily and expediently be achieved through the transfer to Preci Spark of **all** of the land required to support both the viaduct and provide compensatory parking, subject to a clause limiting the use of the land for those purposes.

Surety to protect the rights of GCR to pass over the land by means of the proposed viaduct will be delivered through a requirement upon Preci Spark to grant a lease to GCR to enable them to construct that viaduct.

As a result of the negotiations the boundary of the land which is now to be transferred to Preci Spark, including that "adversely possessed," is indicated by the solid red line on the plan attached. The "adversely possessed" land is located to the west of the broken red line delineating the eastern boundary of Preci Spark's operational car park which is effectively conceded as already within the ownership of the company.

Negotiations – Lease to GCR

It has also become apparent through negotiations that GCR will require rights over the Council's retained land to enable the company to build and subsequently maintain the viaduct. For ease of operation it has been agreed to extend the demise of the lease to include the area which is outlined in blue on the attached plan. The land itself comprises a steep embankment which falls to the bank of the Hermitage Brook. The land is inaccessible other than through the Preci Spark car park and has no practical value.

Valuation

The Valuation Office Agency has been instructed to review previous advice in light of the variation in transfer and leasehold arrangements previously agreed between the parties.

The registered valuer has commented as follows:

"When I valued the different areas of land previously I made an adjustment for the risk of a claim for adverse possession being made by Preci Spark so that was already reflected in the informal valuations provided.

Now that the whole area previously valued is to be transferred to Preci Spark, I would value the land at £2,600. However, being realistic this

can be regarded as a nominal sum and would certainly not trigger any S.123 requirement for Secretary of State consent if the land were to be transferred at £ nil, in furtherance of the overall objective of facilitating the extension of the GCR.

With regard to the extension of the GCR lease to include the land edged [blue], this is likely to make a nominal difference only to the overall rental value of the whole of the demised area to GCR, and I would recommend that no formal valuation advice is required as a result of this proposal.”

Procedural Compliance

The Asset Management Strategy sets the strategic direction for the use, management and development of the Council’s corporate property resources over the period 2013/14 to 2017/18. The strategy is aligned to the Corporate Plan and aims to support the commitment to growth and prosperity by:

- Supporting opportunities for business growth, and
- Helping business to prosper and grow

The subject site is not specifically identified in the Fixed Asset Base but reasonably might be classified as non-operational land.

The reconnection of the heritage railway clearly will support local business growth and development both directly and indirectly and presents a legitimate use of the Council’s asset.

The Land and Property Disposals and Acquisition Policy sets out the procedures and protocols to be applied in the management of the Council’s assets. As a general principle the Council aims to sell any surplus land or property for the best available consideration, unless there are exceptional circumstances that are within the law.

Such “exceptional circumstances” include sales of small areas of land where there is realistically only one potential purchaser, for example an adjoining owner. (Paragraph 3.1 (a) applies).

Having previously agreed in principle a land transfer to the adjacent owner, Preci Spark, at £ nil the company might be expected to oppose the prospects of paying £2,600 for the land, particularly when those costs arise from a variation in the contractual details recommended by the Council’s appointed solicitors. Any impediment to the conclusion of the agreement at this late stage in the negotiations could seriously endanger the satisfactory conclusion of the “overarching agreement” which could in turn result in the loss of LLEP funding and overall failure of the “Bridging the Gap” project.

The disposal of the subject site by transfer falls within the provisions for exceptions by reason of its modest valuation and the needs of the adjacent

landowner to ensure that the company is left no worse off by co-operating in the deal to facilitate the reconnection of the GCR.

In consideration of these factors and acknowledging the contribution that the site will make towards the delivery of the Council's Corporate Plan and Core Strategy objectives for the physical regeneration and projected economic success of the East Loughborough Industrial Heritage Quarter, the Asset Management Team has endorsed the principle of the transfer of the land to Preci Spark and extension of the leasehold demise to GCR subject to the Council's legal costs being met.

Financial Implications

The land exchange is to be transferred at nil value with the parties legal costs being covered by GCR within the scope of the "tripartite agreement" linked to the "overarching agreement" with Network Rail and others for the delivery of the "Bridging the Gap" project.

Risk Management

No specific risks have been identified with this report.

Key Decision: No

Background Papers: e-mail dated 9 December 2016 (18:59) from Ken Shirer (Valuation Office Agency) to Sheetal Shah.

Appendix 1: Land to be transferred to Preci Spark and leased to GCR

