

Item 15 Wheelspark Lease Agreement

1. Background

- 1.1 When this project commenced many years ago the intention was that Todmorden Town Council would seek funding to construct the Wheelspark with then CMBC retaining operational responsibility.
- 1.2 Outline lease terms were under discussion for some time, but not fully agreed, noting that there had been other delays.

2. Accelerator funding

- 2.1 This will be conditional upon several matters being resolved. Whilst these are being actively pursued, key to their agreement being formally offered is a commitment by Todmorden Town Council to take on the ownership of the site by way of a formal lease.
- 2.2 Given where we are on this project, CMBC have agreed to a formal lease transfer taking place after the development has been completed, but in the meantime, require us to enter into an Agreement to Lease, with such document referring to the lease itself. Therefore we need to agree the lease terms now.

3 Lease Terms

- 3.1 The proposed Lease is attached as per Appendix 1 plus a Management Plan Appendix 2.
- 3.2 Having reviewed this, CMBC have been asked to consider the following clauses which seem to run contrary to the spirit of CMBC meeting the ongoing operation cost and responsibility, albeit reference is made in a broad way as to them as Landlord picking up areas of responsibility.

Clause 2(2) if rates became payable, we could not afford these - exclude or side letter to advise would not be held liable or CMBC pay in substitution

Clause 2(7a) - re party wall repairs etc again exclude or side letter exclusion.

Clause 2(7b) drainage sewers etc again exclude or side letter exclusion.

Clause 2(8) requirement of us on your visit to carry out repairs etc and if not done then do yourselves and recharge - etc again exclude or side letter exclusion.

Clause 2(10) minimise noise - a practical operational requirement - suggest remove or again exclude or side letter exclusion

Clause 2(15) refuse or drains obstructed etc again exclude or side letter exclusion.

Clause 2(19) conform to reasonable regulations and restrictions advised by Landlord - again exclude or side letter exclusion.

Clause 2(25) tenant responsible for day to day management - again exclude or side letter exclusion.

4. Todmorden Town Council Protection - Repairs and Maintenance

4.1 Whilst the above clauses in 3.2 may place a burden on the Town Council, there are two, significant additional clauses contained within the lease agreement that offer strong protection

4.1a *3(3) The Landlord shall be responsible for the routine maintenance of the Existing Facilities and following completion of construction (but not during the said construction) of the Improved Facilities (such maintenance to be undertaken in accordance with the management plan appended to this Lease at the Second Appendix) but for the avoidance of doubt the Landlord shall not be responsible for carrying out major repairs to the Existing Facilities or Improved Facilities or the equipment installed upon the Demised Premises or for the replacement of the equipment installed upon the Demised Premises*

4.2 This affords TTC protection in respect of routine maintenance but does not commit CMBC to major repairs or any equipment replacement. It should be viewed against a proposed scheme that will be consisting of concrete surface and structure so should be minimal in terms of regular maintenance, repair cost and to some extent vandal proof- although never guaranteed.

4.3 Seating is proposed and therefore this may be a liability the Town Council would need to pick up if such seating became damaged.

4.4 The issue then surrounds any definition of major repair that could potentially leave the Town Council with substantial costs. This is covered by

5(3) In the event that the Demised Premises and/or the equipment installed upon the Demised Premises are damaged or destroyed or if the Demised Premises or said equipment become unfit for use (notwithstanding that the Landlord has complied with its obligations under Clause 3(3) then the Landlord and the Tenant (acting in good faith) shall hold talks to try to identify funding

(including possible external funding) for the repair or reinstatement of the Demised Premises or the said equipment (as the case may be) or for the replacement of the said equipment but in the event that such funding is not available and the Landlord (acting reasonably) considers that it is not cost effective to undertake the necessary repairs, reinstatement or replacement then either party may determine this Lease upon the provision of not less than 3 months' written notice to the other party and upon the expiry of such notice this Lease shall determine

- 4.5 This covers any of the site if it “*become unfit for use*” in that we may determine the lease with 3 months’ notice.
- 4.6 In practice this clause is designed to provide a get out for either party in that neither Landlord or Tenant are obliged to undertake any major repairs so if it became necessary the facility could be closed as uneconomic to repair.
- 4.7 The clause is also there to encourage both parties to work together to find a solution should substantial unforeseen remedial costs be involved – however unlikely.
- 4.7 Importantly from our part concerns regarding clause 2(7a) party walls and 2(7b) drainage 2(15) obstructed drains - costs of repair could trigger Clause 5(3) as failure of either of these would make the site “*unfit for use*”

5 Todmorden Town Council Protection – Other obligations

- 5.1 Rates payable – this is an extremely low risk of Non-Domestic Rates being introduced.
- 5.2 Given its location, it is unlikely noise will be an issue, but if it is, managing noise nuisance would involve us passing on any concerns on to the Neighbourhoods Function at CMBC.

6. Todmorden Town Council Protection – unknown obligations

- 6.1 Day to day Responsibility passes to Todmorden Town Council.
- 6.2 The Management Plan (Appendix 2) deals with Maintenance, Inspections Faults and Defects.
- 6.3 These are key areas of risk that remain with CMBC.
- 6.4 What will be left for Todmorden Town Council to manage is an unknown, but for example fair use may such an issue.

6.5 To reduce the likelihood of misuse of the facility Todmorden Town Council may wish to encourage and support an active user group to be formed

7. Conclusion

7.1 There has been considerable progress made in arriving at clauses 3(3) and 5(3) to be included in the lease terms.

7.2 Clauses 2(2),2(7a),2(7b),2(8),2(10),2(15) 2(19), and 2(25) are standard type lease terms and inclusion generally confers liability on the site owner, which a funder would expect and which reinforces this as a Landlord/Tenant Act relationship as opposed to Licence/licensee relationship.

7.3 A landlord/Tenant relationship would therefore meet CMBC requirement to be satisfied that this is legally an independent and standalone project that can be then be funded by Accelerator Funding.

8. Recommendation

8.1 That whilst the Town Clerk continue to try to remove the clauses as per 3.2 above, in the event that CMBC insist on these remaining, that Todmorden Town Council be authorised to enter into this lease under seal, or under the hand of two Members.