

## **COUNCIL 14TH SEPTEMBER 2011 AGENDA ITEM 10**

### **LANCASTER MARKET – SUPPLEMENTARY INFORMATION**

#### **HEAD OF FINANCIAL SERVICES, HEAD OF PROPERTY SERVICES AND HEAD OF GOVERNANCE**

Since the Council report was prepared, further information has been received from individual tenants, which indicates that not all of them are willing to move from the first floor to the ground floor or to relocate within the ground floor.

The effect of this information on the original Cabinet recommendation of the 26th July is as follows:

**i. That all market traders be moved onto the ground floor and rents or service charges not be increased at this point.**

As all market traders have not agreed the move it will not be possible to effect a move by agreement.

**ii. That legal agreement be reached with traders on the move to the bottom floor and to costs that traders would pay for moving and fitting out.**

It has not proved possible to reach a legal agreement with all traders.

**iii. That the move in (i) above be done with some urgency to protect existing businesses on the top floor and to protect the Council's future rental income.**

It would only be possible to achieve a move to the ground floor if the court action results in a break clause being included in the new leases. However, it is by no means certain that the court will incorporate a break clause into the new lease, and even if it does, there will be a considerable delay in being able to implement such a clause in order to enforce a move to the ground floor.

It will not be possible therefore to undertake any move with some urgency, if at all.

Such a delay could also bring into question the ongoing viability of the market as a whole, as some traders could leave during this period due to the continuing uncertainty as to the future of the market which in itself has an effect on the level of footfall and trade.. This would mean that the actual decision on any capital investment would need to be reconsidered at the time of the outcome of the court proceedings, taking account of the market's trading position at that time.

**iv. That alternative tenants be sought for the upper floor.**

This recommendation could continue with a view to seeking a tenant for the upper floor if and when it becomes vacant. However, uncertainty as to when that might be would make the process more difficult and clearly this element of the recommendation cannot be taken forward in isolation.

**v. That the recommendations in terms of improved marketing and management recommended to Council in the NCS report received in December 2010 be carried out.**

It would not be appropriate to carry out marketing until the future of the market was more certain.

**vi. That the Council's costs of running the market be examined and it be considered whether these can be reduced.**

This is an ongoing management process.

### **Conclusion:**

The Cabinet recommendation of the 26th July, which reflected option 2 in the report to that meeting, was on the basis that the traders had suggested the move to the ground floor, and there was therefore an expectation that their full agreement to the move would be forthcoming. As this is no longer the case, as indicated above, the recommendation is no longer achievable.

Option A in the financial appraisal was in effect the same as the Cabinet recommendation. Accordingly, it could no longer be achieved by agreement, as originally envisaged.

However, as indicated above, a variation of Option A may still be available in the longer term, if (and only if) the court were to incorporate a break clause in the new lease and there was still sufficient trading within the market at that time to justify capital investment. This outcome of the court proceedings is, however, by no means certain, is some time away, and indeed is being opposed by the traders' representatives.

Accordingly, there would be substantial risk in proceeding with this option at this time. If Members were minded to go along this route, there would need to be further consideration of the position following the outcome of the court proceedings. In the event that that outcome was in the Council's favour, a further assessment of the financial implications would be necessary at that stage. In the event that the outcome were unfavourable, the Council would need to reconsider its position, resulting in further delay and uncertainty.

The same comments apply also to Option B, which although not an option recommended by officers, relied on a move to the ground floor.

13th September 2011

### **Addendum – 14th September 2011**

The above reflected the position at the close of business on the 13th September. However, this morning (14th September), the Head of Property Services received a telephone call from the Chairman of the Market Traders' Association indicating that a meeting was held last night with those traders who had opposed the move to the ground floor, and as a result, written confirmation from all tenants affected would be

delivered to the Head of Property Services this morning. These were subsequently received whilst this addendum was being written.

In addition, members should be aware that one trader, a national company not a member of the Association, has indicated that it would be prepared to agree to the move only if the Council were to agree a reduction to the proposed rent of the new ground floor premises. Clearly, this is not an unequivocal acceptance of the move.

From this information, Members should be aware that full acceptance of the proposed move to the ground floor is by no means certain. Clearly, officers' advice would be that it will be absolutely essential to have binding legal agreements in place with all affected traders before any capital investment could be made. There is a danger that this may ultimately not be achieved, resulting in further delay and uncertainty if members were minded to adopt Option A.