

**Lancaster Indoor Market
16 November 2011**

Report of Cabinet

PURPOSE OF REPORT

To consider the report on Lancaster Market which was deferred at the meeting on 14 September 2011.

This report is public

RECOMMENDATIONS

- (1) **That Council gives further consideration to the report concerning Lancaster Indoor Market.**

1.0 Introduction

- 1.1 At the meeting on 14 September 2011, Council deferred consideration of the Lancaster Market report. The report is again attached for information along with the appendices that formed part of that report and the supplementary information published prior to the meeting.
- 1.2 This report incorporates the various elements of information that were provided at the meeting as a result of the information arriving after the reports were published or as a result of questions raised by Council.

2.0 Additional Information

- 2.1 The original Council report made reference to the costs of achieving the trader's request to move to the ground floor of the market hall. The cost of the move was assessed by independent quantity surveyors from the NPS Group, and the figure of £272K referred to in the report was derived from this information. A copy of the breakdown is attached at appendix A of this report. Stall numbers and trades have been removed to maintain confidentiality.
- 2.2 Rent arrears have continued to rise. The debt within the market from current traders at the time of writing this report stands at £15,651. This is from 8 traders of which only one trader has agreed a payment plan to reduce the arrears.
- 2.3 As outlined in the appendices to the original report, the Council's position is that legal action will be taken against all tenants who are in arrears. Council should be aware

that ultimately this may involve taking forfeiture action, which could eventually lead to the council taking possession of the stalls affected.

- 2.4 Council should also be aware that since the previous meeting, a further trader has served notice to leave the market at the end of December 2011 and one further trader will be leaving in the near future. However one additional trader has moved into the market, leaving a net reduction of one trader.
- 2.5 Such changes increase the net costs of operating the market. In comparative terms, however, over the longer term these changes are marginal and therefore they do not change the conclusions of the attached financial appraisal. For this reason, revised figures have not been presented. The reduced occupancy does give rise to more uncertainty over whether the market could have a future even for the short to medium term, however.
- 2.6 Separately, a number of questions were raised by members at or around the time of the meeting, the information on which is contained below.
- 2.7 There is currently no user lined up for occupation of the upper floor as the market is still an operational market until such time as the Council takes a decision that changes this. There is therefore no user lined up for this space. Once a decision is taken, if this leads to the need to find a user(s) then appropriate marketing will be required.
- 2.8 The costs for moving the market to the ground floor do not include removal of the escalators. From previous information, if the escalators were to be removed and the void that work created was to be filled in, then there would be an additional cost of approximately £200,000.
- 2.9 As no use has been identified for the upper floor (see above) it is not possible at this stage to provide a full assessment of potential income. However, if a single retail user is to be sought, it is unlikely in the current climate that a user for the upper floor would result in significant income during the four year period identified within the report. This is due in part to the current financial climate in general and retail in particular and in part to the limited number of retailers who would use an upper floor. In addition if a user was to be found, the incentives that the letting market would demand would result in rent free periods etc.
- 2.10 The Landlord (Allied) has been approached to see if the upper floor can be used for non-retail purposes as such uses have been discussed at cabinet in the past as an option. The response indicated that such a proposal would be something that would have to be discussed in more detail before making comment. Allied indicated that the premises is for retail and they would like to protect the pedestrian flows as such. Allied would be happy to look at any proposals that the Council may have.
- 2.11 As an alternative to retail use of the upper floor consideration has been given to possible "retail" exhibition space on the upper floor of the market be set up with exhibitions. If the council is to hold exhibitions, it would be on the basis of the space being available for a user to bring in their own exhibition at their own cost. There are some potential uses to work with other organisations on subjects such as healthy eating where it might be possible to utilise funding from other organisations.
- 2.12 As part of the discussions with Allied, discussions have taken place regarding the prospects for a surrender of the lease which would release the council from the lease in its entirety. If the lease were to be terminated in this way, the total cost to the

council would be capped at the total of the negotiated lump sum to the Landlord plus the compensation payable to the remaining traders.

In this respect the original report identifies the estimated implications of this option as part of option F in paragraph 5.1.1 of the financial appraisal and the final option referred to in the table at paragraph 5.2.1 of the same financial appraisal.

- 2.13 Council is also advised that it has utilised its own internal legal advice on this matter as it is considered inappropriate to increase costs further by taking external advice.
- 2.14 Council should also be aware that since the September meeting the Council has been involved in a Case Management Conference (CMC) at the County Court with regard to the proposed renewal of the leases. As with all complicated cases or matters exceeding a set value the Lancaster County Court had scheduled the hearing in order to give directions to trial.
- 2.15 Prior to the CMC hearing there was disagreement between the Council and a number of tenants as to the level of rent. At the hearing the Court heard that 16 of the tenants now agreed with the level of rent as proposed by the Council. Furthermore it was asserted that all of these tenants were in agreement with the terms of the new lease save for the Council's proposed redevelopment break clause.
- 2.16 However, there is still one tenant who disagrees with the level of rent as proposed. Furthermore, the same tenant opposes the Council's proposed redevelopment clause and cannot agree, at this stage, the other terms of the draft lease.
- 2.17 In order to progress the outstanding issue of the redevelopment break clause, the Court as part of its general directions for the timetabling of the case, has ordered the Council to set out by 15 December 2011 the following:
1. What steps it has already taken as to rebuilding, revitalisation or reconstruction of the Market Hall or the transfer of the Defendants' interest therein;
 2. Details of any proposals to provide alternative accommodation;
 3. Any reasons known to the Council at the date of reply as to why the steps and proposals may not be put into effect;
- 2.18 The Court's directions go on to detail various other steps that both parties need to comply with. A further CMC hearing is to be scheduled by the Manchester County Court on the next available date after 7 March 2012

3.0 Details of Consultation

- 3.1 No further consultation has taken place on this matter since consideration of the last report was deferred by Council

4.0 Options and Options Analysis (including risk assessment)

- 4.1 The options are as set out in the deferred report.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

It is considered that there is no such direct impact arising.

FINANCIAL IMPLICATIONS

As set out in appendix B of the original report.

OTHER RESOURCE IMPLICATIONS

Human Resources/Information Services/Property/Open Spaces:

As set out in the appendices

SECTION 151 OFFICER'S COMMENTS

The s151 Officer's comments are included on the attached original report. In addition, she would advise Council to consider and take into account what impact the more recent reductions in occupancy may have on the future viability of the market operation.

LEGAL IMPLICATIONS

As set out in the appendices.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments to make.

BACKGROUND PAPERS

Background papers are exempt

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