



## CABINET REPORT

<b>Report Title</b>	<b>Grant of Lease on Delapré Stable Yard</b>
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**AGENDA STATUS: PRIVATE**

<b>Cabinet Meeting Date:</b>	20 February 2019
<b>Key Decision:</b>	NO
<b>Within Policy:</b>	YES
<b>Policy Document:</b>	NO
<b>Service Area:</b>	Economy, Assets and Culture
<b>Accountable Cabinet Member:</b>	Jonathan Nunn
<b>Ward(s)</b>	Delapré and Briar Hill

### 1. Purpose

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- 1.1 This reports seeks Cabinet approval for the grant of a lease on the Stable Yard complex at Delapré Abbey to Delapré Abbey Preservation Trust;

### 2. Recommendations

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That Cabinet agree:

- 2.1 To grant a 25 year lease (the "Lease") to Delapré Abbey Preservation Trust (DAPT) for the area outlined in red on the plans at annex 1 and annex 2;
- 2.2 That the annual rent payable to the Council by the Trust shall be one peppercorn;
- 2.3 That the terms of the Lease shall be as outlined in the draft Heads of Terms at annex 3;

- 2.4 That authority be delegated to the Head of Economy, Assets and Culture in consultation with the Borough Secretary, the Chief Financial Officer, and the Leader of the Council to finalise the terms of the lease in accordance with the draft Heads of Terms, and to take any other actions necessary to complete the Lease.
- 2.5 To authorise the advertisement of the proposed disposal of public open space in accordance with s.123 (2A) of the Local Government Act 1972 (as amended)

### **3. Issues and Choices**

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#### **3.1 Report Background**

- 3.1.1 The main Delapré Abbey buildings have been subject to extensive restoration works, and were opened to the public in March 2017. These areas are the subject of a separate lease to that covered by this report.
- 3.1.2 As a new charitable enterprise working in partnership with the Council and the Heritage Lottery Fund, all parties have been aware of the challenges facing DAPT in its efforts to achieve financial sustainability, made more difficult by the substantial negative financial impact of the delayed opening.
- 3.1.3 One of the Trust's key objective is to generate new income streams and the development of the block of buildings known as the 19<sup>th</sup> Century Stable Yard has been a key element of these plans since the inception of the Delapré project.
- 3.1.4 DAPT propose to approach grant funders/commercial funders in order to bring this important range of historic buildings back into use. The scheme will complement the main Abbey visitor attraction which successfully opened to the public in March 2017 and follows a similar model to other craft and retail "villages" found adjacent to historic houses, such as Castle Ashby or Hardwick Hall.
- 3.1.5 The intention is for the Stable Yard to provide an enjoyable, destination shopping experience, event space, wedding venue and workshop/artist or artisan studio facility with a changing selection of retail units and a programme of "pop-up" retail experiences, all within easy reach of the town centre.
- 3.1.6 Importantly, by giving visitors another attraction on site, the facility will extend current average dwell times and make it easier to attract repeat custom. The location of the Stables also means that it will draw significant passing footfall from general park users broadening the Trust's audience base and visitor demographic profile.

- 3.1.7 The economic rationale for the development is to underpin the ongoing financial sustainability of the Abbey. With DAPT's current business plan predicting a shortfall, it's vital that the Trust is able to generate new revenue sources such as this in order to meet our shared objective of seeing the whole project becoming self-supporting in the medium to longer term.
- 3.1.8 The areas external to the Stable Yard buildings are classed as Open Space. They are therefore to be excluded from the lease, and will be subject to separate access arrangements. This is described in detail in the legal commentary at Section 4.3.

## **3.2 Issues**

- 3.2.1 There are three key risks associated with the grant of the lease to Delapré Abbey Preservation Trust.
- 3.2.2 Risk 1. – The area to be leased to the Trust currently has two other occupiers. The basis of occupation by one is clear, the other is less clear. The Lease requires the Council to secure vacant possession within 18 months, which may not be possible. In this case the provisions of the lease are such that Delapré Abbey Preservation Trust or the Council can decide not to proceed with the Lease, which will impact on the long-term sustainability of the Trust. There is also a possibility that the Council will incur costs in securing vacant possession, but at the moment it is not possible to determine the level of any such costs.
- 3.2.3 Risk 2. - The Lease requires that the Trust carry out the improvement works within a certain time-frame. If this is not achieved the Council can take the decision to terminate the Lease, which again will impact on the long term sustainability of the Trust.
- 3.2.4 Risk 3. – The third risk is that the Trust carry out the improvement works as planned but the income generated by the commercial activities is not sufficient to support the running of both the Stable Yard complex and the main Abbey. In this case there is a risk that the Abbey may have to close, which in turn would lead to the Trust forfeiting the lease on the Abbey itself, yet retain the lease on the income generating Stable Yard. To mitigate this risk the Lease on the Stable Yard will include provisions to terminate the Lease should the lease on the Abbey be either forfeited or surrendered.

## **3.3 Choices (Options)**

- 3.3.1 The Council can decide not to grant the Lease to the Trust. This option is not recommended, as it will not support the long term sustainability of the Trust and the Abbey.
- 3.3.2 The Council can decide to grant the Lease. This is the recommended option, as this is the course of action which will enable the Trust to make the Abbey financially self-sufficient.

## **4. Implications (including financial implications)**

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### **4.1 Policy**

4.1.1 There are no policy implications arising from this report.

### **4.2 Resources and Risk**

4.2.1 The key risks associated with the granting of the lease have been identified in Section 3.2. These risks are considered to be manageable.

### **4.3 Finances**

4.3.1 There is currently £1,392k of capital funding outstanding from the Heritage Lottery Fund for the Delapré Abbey restoration project. Its release is dependent on the signing of the main lease which the trustees are unable to complete until the terms of the lease have been agreed for the Stable Yard.

4.3.2 A financial analysis of the DAPT financial business plan confirms that additional income is essential in order to ensure that the overall scheme is commercially viable for the medium to long term. Income forecasts for the Stable Yard produced by DAPT indicate that a significant contribution would be made to the Abbey's overall commercial prospects.

### **4.4 Legal**

4.4.1 Pursuant to a Byelaw in respect of the Parks and Pleasure Grounds in the Borough of Northampton dated 1<sup>st</sup> December 1966 the following areas of Delapré Park (Delapré Abbey Gardens, Delapré Field "B", Delapré Lower Park, Delapré Middle Park and Delapré Woods) were designated as pleasure grounds pursuant to s.164 of the Public Health Act 1875. The Byelaw regulated the public's use of the pleasure grounds.

4.4.2 The Stable Yard complex forms part of the areas identified in paragraph 4.4.1. Consideration has therefore been given to the provisions of s.123 (2A) of the Local Government Act 1972 (LGA 1972) which states that a Council may not dispose of any land consisting or forming part of an open space unless before disposing of the land in question, they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a local newspaper, and consider any objections to the proposed disposal which may be made to them.

4.4.3 The ancillary buildings that form part of the Stable Yard complex do not form part of the open space. However, any lease of the land surrounding the Stable Yard buildings will trigger the provision of the LGA 1972.

4.4.4 Review of how various buildings at Delapré Park have been leased in the past by the Council reveals that areas of land (South Lawn, Eastern Garden,

Walled Garden and Car Parks) at Delapré Park have been licenced to Delapré Abbey Preservation Trust ("Trust").

- 4.4.5 A licence of open space is not for the purposes of the LGA 1972 a disposal, albeit that the position is not a definitive one. In essence a licence is simply permission to do something on the Council's land and crucially a tenant under a licence does not have exclusive possession which is the distinguishing feature of a lease. Nor should a licence contain clauses which are indicative of exclusive possession. If this were to occur the Council will be required to follow the provisions of the LGA 1972 referred to above at paragraph 4.3.2. A failure to properly comply with the provisions of the LGA 1972 may open the Council's decision to challenge by way of Judicial Review.
- 4.4.6 It is recommended best practice to obtain a realistic valuation when considering a disposal at less than best consideration, that being said in relation to the commercial value of a disposal what is reasonable entirely depends on the facts of the transaction. When considering the best price that can reasonably be obtained the Council can have regard to ethical as well as commercial considerations.
- 4.4.7 The Local Government Act 1972: General Disposal Consent (England) 2003 gives the consent of the Secretary of State to a disposal at less than best consideration in specified circumstances.
- 4.4.8 Those specified circumstances are:
- (a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
    - i) the promotion or improvement of economic well-being;
    - ii) the promotion or improvement of social well-being;
    - iii) the promotion or improvement of environmental well-being; and
  - (b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).
- 4.4.9 In this instance it is considered that granting the lease at a peppercorn rent contributes to all three of the objectives at 4.4.8 above.

## **4.5 Equality and Health**

- 4.5.1 An Equality Impact Assessment was previously undertaken in respect of the main Abbey project, and the same considerations will pertain in respect of the Stable Yard.

#### **4.6 Consultees (Internal and External)**

4.6.1 Consultation on this report has been carried out with the Lead Members and internal services.

#### **4.7 How the Proposals deliver Priority Outcomes**

4.7.1 The Stable Yard redevelopment will secure the future of Delapré Abbey, contributing to our priority outcomes of “Shaping Place and Driving Growth”, and “Creating a Thriving Vibrant Town”.

#### **4.7 Other Implications**

4.8.1 There are no other implications arising from this report.

### **5. Background Papers**

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5.1 Previous Cabinet reports on Delapré Abbey.

### **6. Next Steps**

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6.1 The next actions are to finalise and complete the Lease and associated Licence of Open Space, and to commence the process of advertising the disposal by lease of the Open Space.

**Rick O’Farrell**  
**Head of Economy Assets and Culture**  
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Draft Heads of Terms

- A fixed term of 25 years, with the lease being excluded from the security of tenure provisions of the Landlord and Tenant Act 1954 (to mirror the exclusion of security as regards the lease of the main Abbey).
- Tenant to be Delapré Abbey Preservation Trust.
- The property to be included in the lease to be the 19<sup>th</sup> century Stable Yard building and the Lodge.
- Rent to be one peppercorn per annum and no premium to be paid at the commencement of the term.
- The tenant to have full repair, maintenance and decorating obligations.
- Permitted uses for the various buildings included in the demise to be a combination of the following uses, events and function (whether private or public in nature), and café/restaurant/catering facility and for security. With regard to the part of the site currently used for residential purposes, this use would continue.
- The tenant will be liable for all outgoings, taxes and duties.
- The Council to fully insure the premises with the tenant refunding to the Council in full the insurance premiums paid.
- The tenant not to be permitted to assign the lease unless it is to be a party which is a body established by the tenant. Any assignment would also include a requirement for the contemporaneous assignment of the main Abbey lease to the same party.
- Restrictions to be imposed as regards subletting of the premises.
- The lease will come to an end at the same time as the lease for the main Abbey if the main Abbey lease is terminated for any reason.
- The lease to contain such other terms as are considered to be appropriate to protect the Council's interests and to enable the project to be deliverable.